



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

## **RESEARCH APPENDIX - PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 09/09/2008 (Per: GMM)



Appendix A ... Pt. 09A of 09

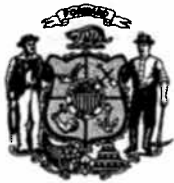
The 2007 drafting file for LRB-0174

has been transferred to the drafting file for

**2009 LRB-0150**

This cover sheet, the final request sheet, and the final version of the 2007 draft were copied on yellow paper, and returned to the original 2005 drafting file.

The attached 2007 draft was incorporated into the new 2009 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2009 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

## RESEARCH APPENDIX -

**PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 09/08/2006 (Per: GMM)



➡ Appendix A ... Part 01 of 12

➡ The 2005 drafting file for LRB 05-4299

has been transferred to the drafting file for

**2007 LRB 07-0174**

➡ This cover sheet, the final request sheet, and the final version of the 2005 draft were copied on yellow paper, and returned to the original 2005 drafting file.

➡ The attached 2005 draft was incorporated into the new 2007 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2007 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

**2005 DRAFTING REQUEST**

**Bill**

Received: **12/28/2005**

Received By: **gmalaise**

Wanted: **Soon**

Identical to LRB:

For: **Health and Family Services 1-8306**

By/Representing: **Cathleen Connolly**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Children - child welfare  
Children - out-of-home placement  
Children - TPR and adoption**

Extra Copies:

Submit via email: **YES**

Requester's email: **cathleen.connolly@dhfs.state.wi.us**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Indian Child Welfare Act

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**Instructions:**

See Attached--draft up WI version of federal Indian Child Welfare Act, 25 USC 1901 et seq.

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 03/15/2006	lkunkel 04/21/2006		_____ _____			
/P1			pgreensl 04/25/2006	_____ _____	lnorthro 04/25/2006		

FE Sent For:

<END>

**2005 DRAFTING REQUEST**

**Bill**

Received: **12/28/2005**

Received By: **gmalaise**

Wanted: **Soon**

Identical to LRB:

For: **Health and Family Services 1-8306**

By/Representing: **Cathleen Connolly**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Children - child welfare  
Children - out-of-home placement  
Children - TPR and adoption**

Extra Copies:

Submit via email: **YES**

Requester's email: **cathleen.connolly@dhfs.state.wi.us**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

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**Instructions:**

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FE Sent For:

<END>

## Malaise, Gordon

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**From:** Connolly, Cathleen  
**Sent:** Thursday, December 15, 2005 2:15 PM  
**To:** Malaise, Gordon  
**Subject:** [Possible Spam] ICWA into Chapter 48!

Hi Gordon,

The Dept. has recently decided to try to move forward on incorporating the language of ICWA into Chapter 48. The Dept. would like to move on this very quickly, having an initial draft to review by January 6th. Is this a possibility given your and LRB's schedule?

Could you meet with Mark, Therese Durkin, Loa Porter (our new ICWA person) and Michelle Jensen-Goodwin to talk about this possibility and what you would need from the Dept, for example, do you want drafting instructions or actual statutory language? We could be available on Monday from 9 to 11(end) or after 2:30 until 4:30. Could you come here or would you prefer to have us come to the LRB? If Monday does not work, do you have time on Tuesday?

Thank you.  
Cathy Connolly  
261-8306

## Malaise, Gordon

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**From:** Connolly, Cathleen  
**Sent:** Monday, January 09, 2006 12:23 PM  
**To:** Malaise, Gordon  
**Cc:** Mitchell, Mark; Porter, Loa; Durkin, Therese  
**Subject:** ICWA and Chapter 48

**Attachments:** Ch48andICWAdraft3\_2.rtf



Ch48andICWAdraft  
3\_2.rtf (2 MB)...

Hi Gordon,

I am attaching a draft of Chapter 48 with provisions of the Indian Child Welfare Act inserted throughout. Mark Mitchell and Therese Durkin created the draft with comments from our staff. We know this is a rough cut and we look forward to receiving your draft. If you have questions please do not hesitate to contact me or Mark Mitchell. If you would like a meeting set up, please let me know and I can work with scheduling at this end. Could you let me know when you think you may have a draft for us to look at?

Thank you.  
Cathy Connolly  
Legislative and Policy Consultant  
DHFS/DCFS/BPP  
608-261-8306

1 Updated 03-04 Wis. Stats. Database  
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Light Blue

ICWA Changes; Draft 3; 01-07-06

## CHAPTER 48

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Unofficial text from 03-04 Wis. Stats. database. See printed 03-04 Statutes and 2005 Wis. Acts for official text under s. 35.18 (2) stats. Report errors to the Revisor of Statutes at (608) 266-2011, FAX 264-6978, <http://www.legis.state.wi.us/rsb/>

## 48.415

## CHILDREN'S CODE

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(2) stats. Report errors to the Revisor of Statutes at (608) 266-2011, FAX 264-6978, <http://www.legis.state.wi.us/rsb/>



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48.913	Payments by adoptive or proposed adoptive parents to a birth parent or child or on behalf of a birth parent or child.	48.978	Appointment or designation of standby guardian of a child.
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**Cross-reference:** See s. 46.011 for definitions applicable to chs. 46, 48, 51, 55 and 58.

**NOTE:** 1995 Wis. Act 275, which made major revisions of Chapter 48, contains extensive explanatory notes.

## SUBCHAPTER I

### GENERAL PROVISIONS

**48.01 Title and legislative purpose.** (1) This chapter may be cited as "The Children's Code". In construing this chapter, the best interests of the child or unborn child shall always be of paramount consideration. This chapter shall be liberally construed to effectuate the following express legislative purposes:

(a) While recognizing that the paramount goal of this chapter is to protect children and unborn children, to preserve the unity of the family, whenever appropriate, by strengthening family life through assisting parents and the expectant mothers of unborn children, whenever appropriate, in fulfilling their responsibilities as parents or expectant mothers. The courts and agencies responsible for child welfare, while assuring that a child's health and safety are the paramount concerns, should assist parents and the expectant mothers of unborn children in changing any circumstances in the home which might harm the child or unborn child, which may require the child to be placed outside the home or which may require the expectant mother to be taken into custody. The courts should recognize that they have the authority, in appropriate cases, not to reunite a child with his or her family. The courts and agencies responsible for child welfare should also recognize that instability and impermanence in family relationships are contrary to the welfare of children and should therefore recognize the importance of eliminating the need for children to wait unreasonable periods of time for their parents to correct the conditions that prevent their safe return to the family.

(ad) To provide judicial and other procedures through which children and all other interested parties are assured fair hearings

and their constitutional and other legal rights are recognized and enforced, while protecting the public safety.

(ag) To recognize that children have certain basic needs which must be provided for, including the need for adequate food, clothing and shelter; the need to be free from physical, sexual or emotional injury or exploitation; the need to develop physically, mentally and emotionally to their potential; and the need for a safe and permanent family. It is further recognized that, under certain circumstances, in order to ensure that the needs of a child, as described in this paragraph, are provided for, the court may determine that it is in the best interests of the child for the child to be removed from his or her parents, consistent with any applicable law relating to the rights of parents.

(am) To recognize that unborn children have certain basic needs which must be provided for, including the need to develop physically to their potential and the need to be free from physical harm due to the habitual lack of self-control of their expectant mothers in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree. It is further recognized that, when an expectant mother of an unborn child suffers from a habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, in order to ensure that the needs of the unborn child, as described in this paragraph, are provided for, the court may determine that it is in the best interests of the unborn child for the expectant mother to be ordered to receive treatment, including inpatient treatment, for that habitual lack of self-control, consistent with any applicable law relating to the rights of the expectant mother.

(ap) To recognize the compelling need to reduce the harmful financial, societal and emotional impacts that arise and the tremendous burdens that are placed on families and the community and on the health care, social services, educational and criminal justice systems as a result of the habitual lack of self-control of expectant mothers in the use of alcohol beverages, controlled substances or controlled substance

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analog, exhibited to a severe degree, during all stages of pregnancy.

(bg) 1. To ensure that children are protected against the harmful effects resulting from the absence of parents or parent substitutes, from the inability, other than financial inability, of parents or parent substitutes to provide care and protection for their children and from the destructive behavior of parents or parent substitutes in providing care and protection for their children.

2. To ensure that children are provided good substitute parental care in the event of the absence, temporary or permanent inability, other than financial inability, or unfitness of parents to provide care and protection for their children.

(bm) To ensure that unborn children are protected against the harmful effects resulting from the habitual lack of self-control of their expectant mothers in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree. To effectuate this purpose and the purpose specified in par. (am), it is the intent of the legislature that the provisions of this chapter that protect unborn children against those harmful effects and that provide for the needs of unborn children, as described in par. (am), shall be construed to apply throughout an expectant mother's pregnancy to the extent that application of those provisions throughout an expectant mother's pregnancy is constitutionally permissible and that expectant mothers who habitually lack self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, be encouraged to seek treatment for that habitual lack of self-control voluntarily when voluntary treatment would be practicable and effective.

(br) To encourage innovative and effective prevention, intervention and treatment approaches, including collaborative community efforts and the use of community-based programs, as significant strategies in planning and implementing legislative, executive and local government policies and programs relating to children and their families and substitute families and to unborn children and their expectant mothers.

(dm) To divert children and unborn children from formal proceedings under this chapter to the extent that this is consistent with protection of children, unborn children and the public safety.

(f) To assure that children pending adoptive homes will be placed in the best homes available and protected from adoption by persons unfit to have responsibility for raising children.

(gg) To promote the adoption of children into safe and stable families rather than allowing children to remain in the impermanence of foster or treatment foster care.

(gr) To allow for the termination of parental rights at the earliest possible time after rehabilitation and reunification efforts are discontinued in accordance with this chapter and termination of parental rights is in the best interest of the child.

(gt) To reaffirm that the duty of a parent to support and maintain his or her child continues during any period in which the child may be removed from the custody of the parent.

(2) In proceedings involving an American Indian child, the best interests of the child shall be determined consistent with the Indian child welfare act, 25 USC 1901 to 1963.

**History:** 1977 c. 354; 1979 c. 330; 1981 c. 81; 1985 a. 311; 1987 a. 383; 1989 a. 41; 1993 a. 446; 1995 a. 77, 275; 1997 a. 237, 292; 1999 a. 32.

The "best interests of the child" is a question of law. Adoption of Tachick, 60 Wis. 2d 540, 210 N.W.2d 865 (1973).

The "paramount consideration" of the child's best interest does not mandate that the child's interests will always outweigh the public's. In Interest of B.B. 166 Wis. 2d 202, 479 N.W.2d 205 (Ct. App. 1991).

Jurisdictional questions relating to the Indian child welfare act are discussed. 70 Atty. Gen. 237.

Adoption and termination proceedings in Wisconsin: Straining the wisdom of Solomon. Hayes and Morse, 66 MLR 439 (1983).

The Indian child welfare act-tribal self-determination through participation in child custody proceedings. 1979 WLR 1202.

**48.02 Definitions.** In this chapter, unless otherwise defined:

(1) "Abuse", other than when used in referring to abuse of alcohol beverages or other drugs, means any of the following:

(a) Physical injury inflicted on a child by other than accidental means.

(am) When used in referring to an unborn child, serious physical harm inflicted on the unborn child, and the risk of serious physical harm to the child when born, caused by the habitual lack of self-control of the expectant mother of the unborn child in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree.

(b) Sexual intercourse or sexual contact under s. 940.225, 948.02 or 948.025.

(c) A violation of s. 948.05.

(d) Permitting, allowing or encouraging a child to violate s. 944.30.

(e) A violation of s. 948.055.

(f) A violation of s. 948.10.

(gm) Emotional damage for which the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to obtain the necessary treatment or to take steps to ameliorate the symptoms.

(1d) "Adult" means a person who is 18 years of age or older, except that for purposes of investigating or prosecuting a person who is alleged to have violated any state or federal

**Deleted:** In this subsection, "American Indian child" means any unmarried person who is under 18 years of age and who is one of the following:¶

(a) A member of an Indian tribe, as defined in 25 USC 1903 (8).¶

(b) Eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

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criminal law or any civil law or municipal ordinance, "adult" means a person who has attained 17 years of age.

(1e) "Alcohol and other drug abuse impairment" means a condition of a person which is exhibited by characteristics of habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs to the extent that the person's health is substantially affected or endangered or the person's social or economic functioning is substantially disrupted.

(1m) "Alcoholism" has the meaning given in s. 51.01 (1m).

(1s) "Approved treatment facility" has the meaning given in s. 51.01 (2).

(2) "Child," except for an Indian child, means a person who is less than 18 years of age, except that for purposes of investigating or prosecuting a person who is alleged to have violated a state or federal criminal law or any civil law or municipal ordinance, "child" does not include a person who has attained 17 years of age.

(2c) "Child custody proceeding," with regard to the Indian child welfare act, 25 USC 1901 to 1963, means all of the following:

(a) Adoptive placement, which is the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption. [Note: See ICWA, s. 1903(1)(iv). Do we need the rest of the language?]

(b) Out-of-home care placement, which means any action removing an Indian child from his or her parent or Indian custodian for temporary placement in a foster home, treatment foster home, group home, residential care center for children and youth, or the home of a guardian or conservator [Note: ??] where the parent or Indian custodian cannot have the child returned upon demand but where parental rights have not been terminated.

(c) Preadoptive placement, which means the temporary placement of an Indian child in a foster home, treatment foster home, group home, or residential care center for children and youth after a termination of parental rights but prior to or in lieu of an adoptive placement.

(d) Termination of parental rights under subch. VIII.

(2d) "Controlled substance" has the meaning given in s. 961.01 (4).

(2e) "Controlled substance analog" has the meaning given in s. 961.01 (4m).

(2g) "County department" means a county department under s. 46.22 or 46.23, unless the context requires otherwise.

(2m) "Court", when used without further qualification, means the court assigned to exercise jurisdiction under this chapter and ch. 938.

(3) "Court intake worker" means any person designated to provide intake services under s. 48.067.

(4) "Department" means the department of health and family services.

(5) "Developmentally disabled" means having a developmental disability, as defined in s. 51.01 (5).

(5g) "Drug dependent" has the meaning given in s. 51.01 (8).

(5j) "Emotional damage" means harm to a child's psychological or intellectual functioning. "Emotional damage" shall be evidenced by one or more of the following characteristics exhibited to a severe degree: anxiety; depression; withdrawal; outward aggressive behavior; or a substantial and observable change in behavior, emotional response or cognition that is not within the normal range for the child's age and stage of development.

(5m) "Foreign jurisdiction" means a jurisdiction outside of the United States.

(6) "Foster home" means any facility that is operated by a person required to be licensed by s. 48.62 (1) (a) and that provides care and maintenance for no more than 4 children or, if necessary to enable a sibling group to remain together, for no more than 6 children or, if the department promulgates rules permitting a different number of children, for the number of children permitted under those rules.

(7) "Group home" means any facility operated by a person required to be licensed by the department under s. 48.625 for the care and maintenance of 5 to 8 children, as provided in s. 48.625 (1).

(8) "Guardian" means the person named by the court having the duty and authority of guardianship.

(8g) "Indian child" means any unmarried person who is under 18 years of age and who is one of the following:

(a) A member of an Indian tribe, as defined in 25 USC 1903 (8).

(b) Eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(8m) "Indian child's extended family" means a person as defined by the law or custom of the Indian child's tribe or, in the absence of such a law or custom, a person who has attained the age of 18 years and who is the Indian child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, first cousin, 2<sup>nd</sup> cousin, or stepparent.

(8g) "Indian child's tribe" means one of the following:

(a) The Indian tribe in which an Indian child is a member or eligible for membership.

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(b) In the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts.

(8t) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of the child.

(8v) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the United States secretary of the interior because of their status as Indians, including any Alaska native village as defined in s. 1602(c) of title 43 of the United States code.

(9s) "Integrated service plan" has the meaning given in s. 46.56 (1) (g).

(10) "Judge", if used without further qualification, means the judge of the court assigned to exercise jurisdiction under this chapter and ch. 938.

(11) "Legal custodian" means a person, other than a parent or guardian, or an agency to whom legal custody of the child has been transferred by a court, but does not include a person who has only physical custody of the child.

(12) "Legal custody" means a legal status created by the order of a court, which confers the right and duty to protect, train and discipline the child, and to provide food, shelter, legal services, education and ordinary medical and dental care, subject to the rights, duties and responsibilities of the guardian of the child and subject to any residual parental rights and responsibilities and the provisions of any court order.

(12m) "Nonidentifying social history information" means information about a person's birth parent that may aid the person in establishing a sense of identity. "Nonidentifying social history information" may include, but is not limited to, the following information about a birth parent, but does not include any information that would disclose the name, location or identity of a birth parent:

- (a) Age at the time of the person's birth.
- (b) Nationality.
- (c) Race.
- (d) Education.
- (e) General physical appearance.
- (f) Talents, hobbies and special interests.
- (h) Reason for placing the child for adoption or for the termination of parental rights.
- (i) Religion.
- (k) Family history.
- (m) Personality traits of each parent.

(13) "Parent" means either a biological parent, a husband who has consented to the artificial insemination of his wife under s. 891.40, or a parent by adoption. If the child is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60, "parent" includes a person acknowledged under s. 767.62 (1) or a substantially similar law of another state or adjudicated to be the biological father. "Parent" does not include any person whose parental rights have been terminated.

(14) "Physical custody" means actual custody of the person in the absence of a court order granting legal custody to the physical custodian.

(14g) "Physical injury" includes but is not limited to lacerations, fractured bones, burns, internal injuries, severe or frequent bruising or great bodily harm, as defined in s. 939.22 (14).

(15) "Relative" means a parent, grandparent, greatgrandparent, stepparent, brother, sister, first cousin, nephew, niece, uncle, or aunt. This relationship shall be by blood, marriage, or adoption.

(15d) "Residential care center for children and youth" means a facility operated by a child welfare agency licensed under s. 48.60 for the care and maintenance of children residing in that facility.

(16) "Secure detention facility" means a locked facility approved by the department of corrections under s. 301.36 for the secure, temporary holding in custody of children.

(17) "Shelter care facility" means a nonsecure place of temporary care and physical custody for children, including a holdover room, licensed by the department under s. 48.66 (1) (a).

(17m) "Special treatment or care" means professional services which need to be provided to a child or his or her family to protect the well-being of the child, prevent placement of the child outside the home or meet the special needs of the child. "Special treatment or care" also means professional services which need to be provided to the expectant mother of an unborn child to protect the physical health of the unborn child and of the child when born from the harmful effects resulting from the habitual lack of self-control of the expectant mother in the use of alcohol, controlled substances or controlled substance analogs, exhibited to a severe degree. This term includes, but is not limited to, medical, psychological or psychiatric treatment, alcohol or other drug abuse treatment or other services which the court finds to be necessary and appropriate.

(17q) "Treatment foster home" means any facility that is operated by a person required to be licensed under s. 48.62 (1) (b), that is operated under the supervision of the department, a

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county department or a licensed child welfare agency, and that provides to no more than 4 children care, maintenance and structured, professional treatment by trained individuals, including the treatment foster parents.

(18) "Trial" means a fact-finding hearing to determine jurisdiction.

(18m) "Tribal court" means a court with jurisdiction over child custody proceedings and which is either a court of Indian offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

(19) "Unborn child" means a human being from the time of fertilization to the time of birth.

**History:** 1971 c. 41 s. 12; 1971 c. 164; 1973 c. 263; 1977 c. 205, 299, 354, 418, 447, 449; 1979 c. 135, 300, 352; 1981 c. 81; 1983 a. 189, 447, 471; 1985 a. 176; 1987 a. 27, 285, 339; 1989 a. 31; Sup. Ct. Order, 151 Wis. 2d xxv (1989); 1989 a. 107; 1991 a. 39; 1993 a. 98, 375, 377, 385, 446, 491; 1995 a. 27 ss. 2423 to 2426p, 9126 (19); 9145 (1); 1995 a. 77, 275, 352, 448; 1997 a. 27, 104, 191, 292; 1999 a. 9; 2001 a. 16, 59, 69.

**Cross-reference:** See s. 46.011 for definitions applicable to chs. 46 to 51, 55 and 58.

Under sub. (13), a deceased parent continues to be parent; a deceased parent's parents continue to be grandparents. Grandparental Visitation of C.G.F. 168 Wis. 2d 62, N.W.2d 803 (1992).

A viable fetus is not a "person" within the definition of a child under sub. (2). State ex rel. Angela M.W. v. Kruczicki, 209 Wis. 2d 112, 561 N.W.2d 729 (1997), 95-2480.

While the second sentence of sub. (13) applies exclusively to nonmarital children, the first sentence does not apply exclusively to children of married individuals. The biological father of a nonmarital child satisfies the definition of parent in s. 48.02 (13) as he is a biological parent notwithstanding that he has not officially been adjudicated as the child's biological father. State v. James P. 2005 WI 80, 281 Wis. 2d 654, 698 N.W.2d 95, 04-0723.

Due process and equal protection; classifications based on illegitimacy. Bazos, 1973 WLR 908.

**48.023 Guardianship.** Except as limited by an order of the court under s. 48.977 (5) (b) or 48.978 (6) (b) 2., a person appointed by the court to be the guardian of a child under this chapter has the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child and the duty to be concerned about the child's general welfare, including but not limited to:

(1) The authority to consent to marriage, enlistment in the U.S. armed forces, major medical, psychiatric and surgical treatment, and obtaining a motor vehicle operator's license.

(2) The authority to represent the child in legal actions and make other decisions of substantial legal significance concerning the child but not the authority to deny the child the assistance of counsel as required by this chapter.

(3) The right and duty of reasonable visitation of the child.

(4) The rights and responsibilities of legal custody except when legal custody has been vested in another person or when

the child is under the supervision of the department of corrections under s. 938.183, 938.34 (4h), (4m) or (4n) or 938.357 (4) or the supervision of a county department under s. 938.34 (4d) or (4n).

**History:** 1977 c. 354; 1993 a. 385; 1995 a. 27, 77, 275, 352; 1997 a. 334.

A guardian may not recover for the loss of society and companionship of a ward, nor may the guardian bring a separate claim for costs incurred or income lost on account of injuries to the ward. Conant v. Physicians Plus Medical Group, Inc. 229 Wis. 2d 271, 600 N.W.2d 21 (Ct. App. 1999), 98-3285.

A guardian has general authority to consent to medication for a ward, but may consent to psychotropic medication only in accordance with ss. 880.07 (1m) and 880.33 (4m) and (4r). The guardian's authority to consent to medication or medical treatment of any kind is not affected by an order for protective placement or services. OAG 5-99.

**48.025 Declaration of paternal interest in matters affecting children.** (1) Any person claiming to be the father of a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60 may, in accordance with procedures under this section, file with the department a declaration of his interest in matters affecting such child.

(2) The declaration provided in sub. (1) may be filed at any time except after a termination of the father's rights under subch. VIII. The declaration shall be in writing, signed by the person filing the declaration and shall contain the person's name and address, the name and last-known address of the mother, the month and year of the birth or expected birth of the child and a statement that he has reason to believe that he may be the father of the child.

(3) A copy of a declaration filed with the department under sub. (1) shall be sent to the mother at her last-known address. Nonreceipt of such copy shall not affect the validity of the declaration. The mother may send a written response to the declaration to the department, and the written response shall be filed with the declaration. Failure to send a written response shall not constitute an admission of the statements contained in the declaration.

(4) Filing a declaration under this section shall not extend parental rights to the person filing such declaration.

**History:** 1973 c. 263; 1979 c. 330; 1981 c. 359; 1983 a. 447.

The constitutional rights of a putative father to establish his parentage and assert parental rights. 58 MLR 175.

**48.027 Child custody jurisdiction.** All proceedings relating to the custody of children shall comply with the requirements of ch. 822.

**History:** 1975 c. 283.

**48.028 Custody of Indian children.** (1) GENERAL PROVISION. The Indian child welfare act, 25 USC 1911 to 1963, supersedes the provisions of this chapter in any child custody proceeding governed by that act.

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(2) EXCLUSIVE JURISDICTION. An Indian tribe shall have exclusive jurisdiction over any child custody proceeding involving an Indian child who resides or who is domiciled within the reservation of the tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law. If an Indian child is a ward of the tribal court, the Indian tribe shall retain exclusive jurisdiction regardless of the residence or domicile of the Indian child.

(3) TRANSFER OF PROCEEDINGS; DECLINATION BY TRIBAL COURT. In any child custody proceeding under this chapter relating to an Indian child not residing or domiciled within the reservation of the child's tribe, the court under this chapter, in the absence of good cause to contrary, shall, upon the petition of either parent of the child, the Indian custodian of the child, or the Indian tribe of the child and absent an objection by either parent, transfer the child custody proceeding to the jurisdiction of the tribe. The tribe shall retain the right to decline the transfer of the proceeding.

(4) STATE COURT PROCEEDINGS; INTERVENTION. In any child custody proceeding under this chapter, the Indian custodian of the child or the Indian tribe of the child shall possess a right to intervene at any point in the child custody proceeding.

**History:** 1981 c. 81.

When the children's code provides safeguards in addition to those in the Indian child welfare act, those safeguards should be followed. In Re Interest of D.S.P. 166 Wis. 2d 464, 480 N.W.2d 234 (1992).

**48.029 Pregnancy testing prohibited.** No law enforcement agency, district attorney, corporation counsel, county department, licensed child welfare agency or other person involved in the investigation or prosecution of an allegation that an unborn child has been the victim of or is at substantial risk of abuse may, without a court order, require a person to take a pregnancy test in connection with that investigation or prosecution.

**History:** 1997 a. 292.

## SUBCHAPTER II

## ORGANIZATION OF COURT

**48.03 Time and place of court; absence or disability of judge; court of record.** (1) The judge shall set apart a time and place to hold court on juvenile matters.

(2) In the case of the absence or disability of the judge of a court assigned to exercise jurisdiction under this chapter and ch. 938, another judge shall be assigned under s. 751.03 to act temporarily in the judge's place. If the judge assigned temporarily is from a circuit other than the one for which

elected, the judge shall receive expenses as provided under s. 753.073.

**History:** 1971 c. 46; 1977 c. 187 s. 135; 1977 c. 273, 449; 1989 a. 56; 1995 a. 77.

**48.035 Court; Menominee and Shawano counties.** Menominee County is attached to Shawano County for judicial purposes to the extent of the jurisdiction and functions of the court assigned to exercise jurisdiction under this chapter and ch. 938 and the office and functions of the judge of the court, and the duly designated judge of the court assigned to exercise jurisdiction under this chapter and ch. 938 of the circuit court for Menominee and Shawano counties shall serve in both counties. The county boards of Menominee County and Shawano County shall enter into an agreement on administration of this section and the prorating of expenditures involved, and for such purposes the county board of supervisors of Menominee County may appropriate, levy and collect a sum each year sufficient to pay its share of the expenses. If the 2 county boards are unable to agree on the prorating of expenditure involved, then the circuit judges for the circuit court for Menominee and Shawano counties shall, upon appropriate notice and hearing, determine the prorating of the expenditures on the basis of a fair allocation to each county under such procedure as they prescribe. If the circuit judges are unable to agree, the chief judge of the judicial administrative district shall make the determination.

**History:** 1977 c. 449; 1995 a. 77.

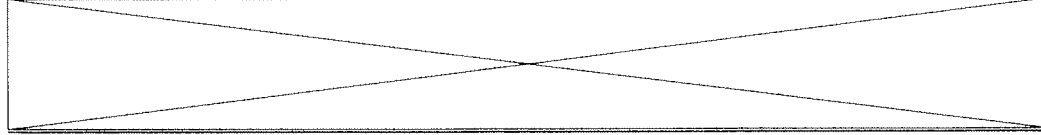
**48.04 Employees of court.** If the county contains one or more cities of the 2nd or 3rd class, the circuit judges for the county, subject to the approval of the chief judge of the judicial administrative district, may appoint, by an instrument in writing, filed with the county clerk, a clerk of court for juvenile matters and such deputies as may be needed, who shall perform the duties of clerk and reporter of the court as directed by the judges. The clerk and deputies shall take and file the official oath and shall receive such salary as the county board of supervisors determines.

**History:** 1977 c. 354, 449; 1985 a. 176; 1999 a. 83.

**48.06 Services for court.** (1) COUNTIES WITH A POPULATION OF 500,000 OR MORE. (a) 1. In counties with a population of 500,000 or more, the department shall provide the court with the services necessary for investigating and supervising child welfare and unborn child welfare cases under this chapter. The department is charged with providing child welfare and unborn child welfare intake and dispositional services and with administration of the personnel and services of the child welfare and unborn child welfare intake and dispositional sections of the department. The department shall include investigative services for all children and unborn

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children alleged to be in need of protection or services to be provided by the department.

2. The chief judge of the judicial administrative district shall formulate written judicial policy governing intake and court services for child welfare matters under this chapter and the department shall be charged with executing the judicial policy. The chief judge shall direct and supervise the work of all personnel of the court, except the work of the district attorney or corporation counsel assigned to the court.

3. The county board of supervisors does not have authority and may not assert jurisdiction over the disposition of any case, child, unborn child or expectant mother of an unborn child after a written order is made under s. 48.21 or 48.213 or if a petition is filed under s. 48.25.

(am) 1. All intake workers providing services under this chapter who begin employment after May 15, 1980, shall have the qualifications required to perform entry level social work in a county department and shall have successfully completed 30 hours of intake training approved or provided by the department prior to the completion of the first 6 months of employment in the position. The department shall monitor compliance with this subdivision according to rules promulgated by the department.

2. The department shall make training programs available annually that permit intake workers who provide services under this chapter to satisfy the requirements specified under subd. 1.

3. Each intake worker providing services under this chapter whose responsibilities include investigation or treatment of child abuse or neglect or unborn child abuse shall successfully complete additional training in child abuse and neglect and unborn child abuse protective services approved by the department under s. 48.981 (8) (d). Not more than 4 hours of the additional training may be applied to the requirement under subd. 1.

(2) COUNTIES WITH A POPULATION UNDER 500,000. (a) In counties having less than 500,000 population, the county board of supervisors shall authorize the county department or court or both to provide intake services required by s. 48.067 and the staff needed to carry out the objectives and provisions of this chapter under s. 48.069. Intake services shall be provided by employees of the court or county department and may not be subcontracted to other individuals or agencies, except any county which had intake services subcontracted from the county sheriff's department on April 1, 1980, may continue to subcontract intake services from the county sheriff's department. Intake workers shall be governed in their intake work, including their responsibilities for recommending the filing of a petition and entering into an informal disposition, by general written policies which shall be formulated by the circuit

judges for the county, subject to the approval of the chief judge of the judicial administrative district.

(b) 1. All intake workers providing services under this chapter who begin employment after May 15, 1980, shall have the qualifications required to perform entry level social work in a county department and shall have successfully completed 30 hours of intake training approved or provided by the department prior to the completion of the first 6 months of employment in the position. The department shall monitor compliance with this paragraph according to rules promulgated by the department.

2. The department shall make training programs available annually that permit intake workers who provide services under this chapter to satisfy the requirements specified under subd. 1.

(c) Each intake worker providing services under this chapter whose responsibilities include investigation or treatment of child abuse or neglect or unborn child abuse shall successfully complete additional training in child abuse and neglect and unborn child abuse protective services approved by the department under s. 48.981 (8) (d). Not more than 4 hours of the additional training may be applied to the requirement under par. (b).

(3) INTAKE SERVICES. The court, the department in a county having a population of 500,000 or more or the county department responsible for providing intake services under s. 48.067 shall specify one or more persons to provide intake services. If there is more than one such worker, one of the workers shall be designated as chief worker and shall supervise other workers.

(4) STATE AID. State aid to any county for court services under this section shall be at the same net effective rate that each county is reimbursed for county administration under s. 46.495. Counties having a population of less than 500,000 may use funds received under s. 46.495 (1) (d), including county or federal revenue sharing funds allocated to match funds received under s. 46.495 (1) (d), for the cost of providing court attached intake services in amounts not to exceed 50% of the cost of providing court attached intake services or \$30,000 per county per calendar year, whichever is less.

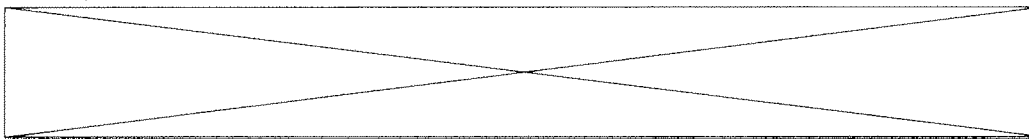
**History:** 1971 c. 125; 1975 c. 39, 199, 302, 307, 422; 1977 c. 271; 1977 c. 354 ss. 10 to 14, 101; 1977 c. 447, 449; 1979 c. 34, 300; 1981 c. 20 s. 2202 (20) (o); 1981 c. 93 s. 186; 1981 c. 314, 329; 1983 a. 239; 1985 a. 29, 176; 1987 a. 151, 399; 1991 a. 274; 1995 a. 27; 1997 a. 27, 80, 292; 2001 a. 61.

**Cross Reference:** See also ch. HFS 49, Wis. adm. code.

**48.067 Powers and duties of intake workers.** To carry out the objectives and provisions of this chapter but subject to its limitations, intake workers shall:

(1) Provide intake services 24 hours a day, 7 days a week, for the purpose of screening children taken into custody and not released under s. 48.20 (2) and the adult expectant mothers of

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unborn children taken into custody and not released under s. 48.203 (1).

(2) Interview, unless impossible, any child or expectant mother of an unborn child who is taken into physical custody and not released, and when appropriate interview other available concerned parties. If the child cannot be interviewed, the intake worker shall consult with the child's parent or a responsible adult. If an adult expectant mother of an unborn child cannot be interviewed, the intake worker shall consult with an adult relative or friend of the adult expectant mother. No child may be placed in a secure detention facility unless the child has been interviewed in person by an intake worker, except that if the intake worker is in a place which is distant from the place where the child is or the hour is unreasonable, as defined by written court intake rules, and if the child meets the criteria under s. 48.208, the intake worker, after consulting by telephone with the law enforcement officer who took the child into custody, may authorize the secure holding of the child while the intake worker is en route to the in-person interview or until 8 a.m. of the morning after the night on which the child was taken into custody.

(3) Determine whether the child or the expectant mother of an unborn child shall be held under s. 48.205 and such policies as the judge shall promulgate under s. 48.06 (1) or (2).

(4) If the child or the expectant mother of an unborn child is not released, determine where the child or expectant mother shall be held.

(5) Provide crisis counseling during the intake process when such counseling appears to be necessary.

(6) Receive referral information, conduct intake inquiries, request that a petition be filed, and enter into informal dispositions under policies promulgated under s. 48.06 (1) or (2).

(6m) Conduct the multidisciplinary screen in counties that have an alcohol and other drug abuse program under s. 48.547.

(7) Make referrals of cases to other agencies if their assistance appears to be needed or desirable.

(7m) At the request of a minor who claims to be pregnant, assist the minor in preparing a petition to initiate a proceeding under s. 48.375 (7) and file the petition with the clerk of circuit court.

(8) Make interim recommendations to the court concerning children, and unborn children and their expectant mothers, awaiting final disposition under s. 48.355.

(9) Perform any other functions ordered by the court, and assist the court or chief judge of the judicial administrative district in developing written policies or carrying out its other duties when the court or chief judge so requests.

**History:** 1977 c. 354, 449; 1979 c. 300; 1987 a. 151, 339; 1991 a. 263; 1993 a. 98; 1997 a. 80, 292; 1999 a. 83.

#### 48.069 Powers and duties of disposition staff. (1)

The staff of the department, the court, a county department or a licensed child welfare agency designated by the court to carry out the objectives and provisions of this chapter, or, in a county having a population of 500,000 or more, the department or an agency under contract with the department to provide dispositional services, shall:

(a) Supervise and assist a child and the child's family or the expectant mother of an unborn child pursuant to informal dispositions, a consent decree or order of the court.

(b) Offer individual and family counseling.

(c) Make an affirmative effort to obtain necessary or desired services for the child and the child's family or for the expectant mother of an unborn child and investigate and develop resources toward that end.

(d) Prepare reports for the court recommending a plan of rehabilitation, treatment and care.

(e) Perform any other functions consistent with this chapter which are ordered by the court.

(2) Except in a county having a population of 500,000 or more, licensed child welfare agencies and the department shall provide services under this section only upon the approval of the agency from whom services are requested. In a county having a population of 500,000 or more, the department or, with the approval of the department, a licensed child welfare agency shall provide services under this section.

(3) A court or county department responsible for disposition staff or, in a county having a population of 500,000 or more, the department may agree with the court or county department responsible for providing intake services that the disposition staff may be designated to provide some or all of the intake services.

(4) Disposition staff employed to perform the duties specified in sub. (1) after November 18, 1978 shall have the qualifications required under the county merit system.

**History:** 1977 c. 354; 1979 c. 300; 1985 a. 176; 1989 a. 31, 107; 1993 a. 98, 385; 1995 a. 27 ss. 2428m, 2428p, 9126 (19); 1995 a. 77; 1997 a. 27, 292.

**48.07 Additional sources of court services.** If the county board of supervisors has complied with s. 48.06, the court may obtain supplementary services for investigating cases and providing supervision of cases from one or more of the following sources:

(2) **LICENSED CHILD WELFARE AGENCY.** The court may request the services of a child welfare agency licensed under s. 48.60 in accordance with procedures established by that agency. The child welfare agency shall receive no compensation for these services but may be reimbursed out of funds made

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available to the court for the actual and necessary expenses incurred in the performance of duties for the court.

(3) **THE DEPARTMENT IN POPULOUS COUNTIES.** In counties having a population of 500,000 or more, the department may be ordered by the court to provide services for furnishing emergency shelter care to any child whose need therefor is determined by the intake worker under s. 48.205. The court may authorize the department to appoint members of the department to furnish emergency shelter care services for the child. The emergency shelter care may be provided as specified in s. 48.207.

(4) **COUNTY DEPARTMENTS THAT PROVIDE DEVELOPMENTAL DISABILITIES, MENTAL HEALTH OR ALCOHOL AND OTHER DRUG ABUSE SERVICES.** Within the limits of available state and federal funds and of county funds appropriated to match state funds, the court may order county departments established under s. 51.42 or 51.437 to provide special treatment or care to a child if special treatment or care has been ordered under s. 48.345 (6) and if s. 48.362 (4) applies or to provide special treatment or care to the expectant mother of an unborn child if special treatment or care has been ordered under s. 48.347 (4) and if s. 48.362 (4) applies.

(5) **COURT-APPOINTED SPECIAL ADVOCATE PROGRAM.** (a) *Memorandum of understanding.* The court may obtain the services of a court-appointed special advocate program that has been recognized by the chief judge of the judicial administrative district. A chief judge of a judicial administrative district may recognize a court-appointed special advocate program by entering into a memorandum of understanding with the court-appointed special advocate program that specifies the responsibilities of the court-appointed special advocate program and of a court-appointed special advocate designated under s. 48.236 (1). The memorandum of understanding shall specify that the court-appointed special advocate program is responsible for selecting, training, supervising and evaluating the volunteers and employees of the program who are authorized to provide court-appointed special advocate services as provided in pars. (b) to (d), that, in addition to any other activities specified in the memorandum of understanding, a volunteer or employee of the program who is authorized to provide court-appointed special advocate services may be designated to perform any of the activities specified in s. 48.236 (3) (a) to (c) and that, in addition to any other authority specified in the memorandum of understanding, a volunteer or employee of the program who is authorized to provide court-appointed special advocate services may be authorized to exercise any of the authority specified in s. 48.236 (4) (a) and (b), unless the parties to the memorandum of understanding determine that a variance from the requirements of pars. (b) to (d), the activities specified in s. 48.236 (3) (a) to (c) or the authority specified in s. 48.236 (4)

(a) and (b) is necessary for the efficient administration of the program.

(b) *Selection.* 1. A court-appointed special advocate program may select a person to provide court-appointed special advocate services if the person is 21 years of age or older, demonstrates an interest in the welfare of children, undergoes a satisfactory background investigation as provided under subd. 2., completes the training required under par. (c) and meets any other qualifications required by the court-appointed special advocate program. A court-appointed special advocate program may refuse to permit to provide court-appointed special advocate services any person whose provision of those services might pose a risk, as determined by the court-appointed special advocate program, to the safety of any child.

2. On receipt of an application from a prospective court-appointed special advocate, the court-appointed special advocate program, with the assistance of the department of justice, shall conduct a background investigation of the applicant. If the court-appointed special advocate program determines that any information obtained as a result of the background investigation provides a reasonable basis for further investigation, the court-appointed special advocate program may require the applicant to be fingerprinted on 2 fingerprint cards, each bearing a complete set of the applicant's fingerprints. The department of justice may provide for the submission of the fingerprint cards to the federal bureau of investigation for the purposes of verifying the identification of the applicant and obtaining the applicant's criminal arrest and conviction record. The court-appointed special advocate program shall keep confidential all information received from the department of justice and the federal bureau of investigation under this subdivision.

(c) *Training.* A court-appointed special advocate program shall require a volunteer or employee of the program selected under par. (b) to complete a training program before the volunteer or employee may be designated as a court-appointed special advocate under s. 48.236 (1). The training program shall include instruction on recognizing child abuse and neglect, cultural competency, as defined in s. 48.982 (1) (bm), child development, the procedures of the court, permanency planning, the activities of a court-appointed special advocate under s. 48.236 (3) and information gathering and documentation, and shall include observation of a proceeding under s. 48.13. A court-appointed special advocate program shall also require each volunteer and employee of the program selected under par. (b) to complete continuing training annually.

(d) *Supervision and evaluation.* The supervisory support staff of a court-appointed special advocate program shall be easily accessible to the volunteers and employees of the program who are authorized to provide court-appointed special

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advocate services, shall hold regular case conferences with those volunteers and employees to review case progress and shall conduct annual performance evaluations of those volunteers and employees. A court-appointed special advocate program shall provide its staff and volunteers with written guidelines describing the policies, practices and procedures of the program and the responsibilities of a volunteer or employee of the program who is authorized to provide court-appointed special advocate services.

**History:** 1975 c. 39; 1977 c. 271, 354, 447; 1979 c. 34; 1981 c. 314 s. 146; 1983 a. 27 s. 2202 (20); 1985 a. 176; 1989 a. 31, 107; 1993 a. 446; 1995 a. 27, 77; 1997 a. 27, 292; 1999 a. 149.

**48.08 Duties of person furnishing services to court.**

(1) It is the duty of each person appointed to furnish services to the court as provided in ss. 48.06 and 48.07 to make such investigations and exercise such discretionary powers as the judge may direct, to keep a written record of such investigations and to submit a report to the judge. Such person shall keep informed concerning the conduct and condition of a child or expectant mother of an unborn child under the person's supervision and shall report on that conduct and condition as the judge directs.

(2) Any person authorized to provide or providing intake or dispositional services for the court under ss. 48.067 and 48.069 has the power of police officers and deputy sheriffs only for the purpose of taking a child into physical custody when the child comes voluntarily or is suffering from illness or injury or is in immediate danger from his or her surroundings and removal from the surroundings is necessary.

(3) Any person authorized to provide or providing intake or dispositional services for the court under s. 48.067 or 48.069 has the power of police officers and deputy sheriffs only for the purpose of taking the expectant mother of an unborn child into physical custody when the expectant mother comes voluntarily or when there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered due to the expectant mother's habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree.

**History:** 1975 c. 302, 421; 1977 c. 354; 1979 c. 300; 1985 a. 320; 1991 a. 39, 316; 1995 a. 27, 77; 1997 a. 292.

A judge may order the department to provide information on foster care placements in a county. In Interest of J. A. 138 Wis. 2d 483, 406 N.W.2d 372 (1987).

**48.09 Representation of the interests of the public.** The interests of the public shall be represented in proceedings under this chapter as follows:

(5) By the district attorney or, if designated by the county board of supervisors, by the corporation counsel, in any matter

arising under s. 48.13, 48.133 or 48.977. If the county board transfers this authority to or from the district attorney on or after May 11, 1990, the board may do so only if the action is effective on September 1 of an odd-numbered year and the board notifies the department of administration of that change by January 1 of that odd-numbered year.

(6) By any appropriate person designated by the county board of supervisors in any matter arising under s. 48.14.

**History:** 1977 c. 354; 1985 a. 176; 1989 a. 336; 1993 a. 246; 1995 a. 77, 275; 1997 a. 292.

**48.10 Power of the judge to act as intake worker.**

The duties of the intake worker may be carried out from time to time by the judge at his or her discretion, but if a request to file a petition is made or an informal disposition is entered into, the judge shall be disqualified from participating further in the proceedings.

**History:** 1977 c. 354; 1979 c. 331, 359; 1995 a. 77; 1997 a. 80.

**48.11 Advisory board.** (1) The court may appoint a board of not more than 15 citizens of the county, known for their interest in the welfare of children, who shall serve without compensation, to be called the advisory board of the court. The members of the board shall hold office during the pleasure of the court. The duties of the board are:

(a) To advise and cooperate with the court upon all matters affecting the workings of this law and other laws relating to children, their care and protection.

(b) To familiarize themselves with the functions and facilities of the court under this law and to interpret to the public the work of the court.

(2) Nothing in this section shall be construed to require the court to open court records or to disclose their contents.

**History:** 1977 c. 449.

## SUBCHAPTER III

## JURISDICTION

**48.13 Jurisdiction over children alleged to be in need of protection or services.** The court has exclusive original jurisdiction over a child alleged to be in need of protection or services which can be ordered by the court, and:

(1) Who is without a parent or guardian;

(2) Who has been abandoned;

(2m) Whose parent has relinquished custody of the child under s. 48.195 (1);

(3) Who has been the victim of abuse, as defined in s. 48.02 (1) (a), (b), (c), (d), (e) or (f), including injury that is self-inflicted or inflicted by another;

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(3m) Who is at substantial risk of becoming the victim of abuse, as defined in s. 48.02 (1) (a), (b), (c), (d), (e) or (f), including injury that is self-inflicted or inflicted by another, based on reliable and credible information that another child in the home has been the victim of such abuse;

(4) Whose parent or guardian signs the petition requesting jurisdiction under this subsection and is unable or needs assistance to care for or provide necessary special treatment or care for the child;

(5) Who has been placed for care or adoption in violation of law;

(8) Who is receiving inadequate care during the period of time a parent is missing, incarcerated, hospitalized or institutionalized;

(9) Who is at least age 12, signs the petition requesting jurisdiction under this subsection and is in need of special treatment or care which the parent, guardian or legal custodian is unwilling, neglecting, unable or needs assistance to provide;

(10) Whose parent, guardian or legal custodian neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child;

(10m) Whose parent, guardian or legal custodian is at substantial risk of neglecting, refusing or being unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of the child, based on reliable and credible information that the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of another child in the home;

(11) Who is suffering emotional damage for which the parent, guardian or legal custodian has neglected, refused or been unable and is neglecting, refusing or unable, for reasons other than poverty, to obtain necessary treatment or to take necessary steps to ameliorate the symptoms;

(11m) Who is suffering from an alcohol and other drug abuse impairment, exhibited to a severe degree, for which the parent, guardian or legal custodian is neglecting, refusing or unable to provide treatment; or

(13) Who has not been immunized as required by s. 252.04 and not exempted under s. 252.04 (3).

**History:** 1977 c. 29, 354; 1979 c. 298, 300, 334; 1985 a. 321; 1987 a. 285, 339, 403; 1993 a. 27, 363, 395, 474; 1995 a. 77, 275; 1997 a. 80; 2001 a. 2.

**NOTE:** 1993 Wis. Act 395, which created subs. (3m) and (10m), contains extensive explanatory notes.

CHIPS proceedings are controlled by the Code of Civil Procedure unless ch. 48 requires a different procedure; summary judgment under s. 802.08 is available in CHIPS cases. In Interest of F.Q. 162 Wis. 2d 607, 470 N.W.2d 1 (Ct. App. 1991).

A jury verdict that children are in need of protection or services requires a separate verdict question for each of the specific jurisdictional grounds alleged. Interest of Luran F. 194 Wis. 2d 283, 533 N.W.2d 812 (1995).

A viable fetus is not a "person" within the definition of a child under s. 48.02 (2). A court does not have jurisdiction over a fetus under this section. State ex rel. Angela M.W. v. Kruzicki, 209 Wis. 2d 112, 561 N.W.2d 729 (1997), 95-2480.

A child's need for protection or services should be determined as of the date the petition is filed. Children can be adjudicated in need of protection or services when divorced parents have joint custody, one parent committed acts proscribed by sub. (10), and at the time of the hearing the other can provide the necessary care for the children. State v. Gregory L.S. 2002 WI App 101, 253 Wis. 2d 563, 643 N.W.2d 890, 01-2325.

**48.133 Jurisdiction over unborn children in need of protection or services and the expectant mothers of those unborn children.** The court has exclusive original jurisdiction over an unborn child alleged to be in need of protection or services which can be ordered by the court whose expectant mother habitually lacks self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, to the extent that there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered unless the expectant mother receives prompt and adequate treatment for that habitual lack of self-control. The court also has exclusive original jurisdiction over the expectant mother of an unborn child described in this section.

**History:** 1997 a. 292.

**48.135 Referral of children and expectant mothers of unborn children to proceedings under chapter 51 or 55.** (1) If a child alleged to be in need of protection or services or a child expectant mother of an unborn child alleged to be in need of protection or services is before the court and it appears that the child or child expectant mother is developmentally disabled, mentally ill or drug dependent or suffers from alcoholism, the court may proceed under ch. 51 or 55. If an adult expectant mother of an unborn child alleged to be in need of protection or services is before the court and it appears that the adult expectant mother is drug dependent or suffers from alcoholism, the court may proceed under ch. 51.

(2) Except as provided in ss. 48.19 to 48.21 and s. 48.345 (14), any voluntary or involuntary admissions, placements or commitments of a child made in or to an inpatient facility, as defined in s. 51.01 (10), shall be governed by ch. 51 or 55. Except as provided in ss. 48.193 to 48.213 and s. 48.347 (6), any voluntary or involuntary admissions, placements or commitments of an adult expectant mother of an unborn child made in or to an inpatient facility, as defined in s. 51.01 (10), shall be governed by ch. 51.

**History:** 1977 c. 354; 1977 c. 418 s. 928 (55) (c); 1977 c. 428 s. 6; 1979 c. 300; 1987 a. 339; 1995 a. 77; 1997 a. 292.

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**48.14 Jurisdiction over other matters relating to children.** The court has exclusive jurisdiction over:

- (1) The termination of parental rights to a minor in accordance with subch. VIII.
- (2) The appointment and removal of a guardian of the person in the following cases:
  - (a) For a minor, where parental rights have been terminated under subch. VIII; or
  - (b) The appointment and removal of a guardian of the person for a child under ss. 48.427, 48.428, 48.43, 48.831, 48.832, 48.839 (4) (a), 48.977 and 48.978 and ch. 880 and for a child found to be in need of protection or services under s. 48.13 because the child is without parent or guardian.
- (3) The adoption of children.
- (5) Proceedings under chs. 51 and 55 which apply to minors and proceedings under ch. 51 which apply to the adult expectant mothers of unborn children, if those adult expectant mothers appear to be drug dependent or to suffer from alcoholism.
- (6) Consent to marry under s. 765.02.
- (7) Appeals under s. 115.80 (7).
- (8) Runaway children, but only as provided under s. 48.227 for the limited purpose described in that section.
- (9) Proceedings under s. 146.34 (5).
- (10) Proceedings under s. 813.122 or 813.125 in which the respondent is a child.
- (11) Granting visitation privileges under s. 880.155.

**History:** 1975 c. 430; 1977 c. 354, 449; 1979 c. 32 s. 92 (2); 1979 c. 300; 1979 c. 330 ss. 3, 13; 1981 c. 81 ss. 5, 33; 1985 a. 50; 1989 a. 161; 1993 a. 318; 1995 a. 38, 77, 275; 1997 a. 164, 292, 334.

If two actions between the same parties, on the same subject, to test the same rights are brought in different courts with concurrent jurisdiction, it is error for the second court to assume jurisdiction. *Interest of Tiffany W. & Myokra W.* 192 Wis. 2d 407, 532 N.W.2d 135 (Ct. App. 1995).

**48.15 Jurisdiction of other courts to determine legal custody.** Nothing contained in ss. 48.13, 48.133 and 48.14 deprives other courts of the right to determine the legal custody of children by habeas corpus or to determine the legal custody or guardianship of children if the legal custody or guardianship is incidental to the determination of causes pending in the other courts. But the jurisdiction of the court assigned to exercise jurisdiction under this chapter and ch. 938 is paramount, subject to the authority of the tribe of an Indian child in child custody proceedings, in all cases involving children alleged to come within the provisions of ss. 48.13 and 48.14 and unborn children and their expectant mothers alleged to come within the provisions of ss. 48.133 and 48.14 (5).

**History:** 1977 c. 449; 1981 c. 289; 1995 a. 77; 1997 a. 292.

**Judicial Council Note, 1981:** Reference to "writ" of habeas corpus has been removed because that remedy is now available in an ordinary action. See s. 781.01, stats., and the note thereto. [Bill 613-A]

**48.16 Jurisdiction over petitions for waiver of parental consent to a minor's abortion.** Any circuit court within this state has jurisdiction over a proceeding under s. 48.375 (7) for waiver of the parental consent requirement under s. 48.375 (4).

**History:** 1991 a. 263.

**48.185 Venue.** (1) Subject to sub. (2), venue for any proceeding under ss. 48.13, 48.133, 48.135 and 48.14 (1) to (9) may be in any of the following: the county where the child or the expectant mother of the unborn child resides or the county where the child or expectant mother is present. Venue for proceedings brought under subch. VIII is as provided in this subsection except where the child has been placed and is living outside the home of the child's parent pursuant to a dispositional order, in which case venue is as provided in sub. (2). Venue for a proceeding under s. 48.14 (10) is as provided in s. 801.50 (5s).

(2) In an action under s. 48.41, venue shall be in the county where the birth parent or child resides at the time that the petition is filed. Venue for any proceeding under s. 48.363, 48.365 or 48.977, or any proceeding under subch. VIII when the child has been placed outside the home pursuant to a dispositional order under s. 48.345 or 48.347, shall be in the county where the dispositional order was issued, unless the child's county of residence has changed, or the parent of the child or the expectant mother of the unborn child has resided in a different county of this state for 6 months. In either case, the court may, upon a motion and for good cause shown, transfer the case, along with all appropriate records, to the county of residence of the child, parent or expectant mother.

**(Note: Do we need to talk about venue if the child's tribe establishes jurisdiction or is that a given?)**

**History:** 1977 c. 354; Stats. 1977 s. 48.185; 1979 c. 330; 1989 a. 161; 1993 a. 98, 318, 491; 1995 a. 77, 275; 1997 a. 80, 292.

This section does not authorize change of venue, upon motion of party or upon stipulation of parties, after adjudication but before the first dispositional hearing. 75 Atty. Gen. 100.

## SUBCHAPTER IV

## HOLDING A CHILD OR AN EXPECTANT MOTHER IN CUSTODY

**48.19 Taking a child into custody.** (1) A child may be taken into custody under any of the following:

- (a) A warrant.
- (b) A capias issued by a judge under s. 48.28.
- (c) An order of the judge if made upon a showing satisfactory to the judge that the welfare of the child demands that the child be immediately removed from his or her present

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custody. The order shall specify that the child be held in custody under s. 48.207 (1).

(cm) An order of the judge if made upon a showing satisfactory to the judge that the child is an expectant mother, that due to the child expectant mother's habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered unless the child expectant mother is taken into custody and that the child expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her. The order shall specify that the child expectant mother be held in custody under s. 48.207 (1).

(d) Circumstances in which a law enforcement officer believes on reasonable grounds that any of the following conditions exists:

1. A capias or a warrant for the child's apprehension has been issued in this state, or that the child is a fugitive from justice.

2. A capias or a warrant for the child's apprehension has been issued in another state.

4. The child has run away from his or her parents, guardian or legal or physical custodian.

5. The child is suffering from illness or injury or is in immediate danger from his or her surroundings and removal from those surroundings is necessary.

7. The child has violated the conditions of an order under s. 48.21 (4) or the conditions of an order for temporary physical custody by an intake worker.

8. The child is an expectant mother and there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered due to the child expectant mother's habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, unless the child expectant mother is taken into custody.

(2) When a child is taken into physical custody as provided in this section, the person taking the child into custody shall immediately attempt to notify the parent, guardian and legal custodian of the child by the most practical means. The person taking the child into custody shall continue such attempt until the parent, guardian and legal custodian of the child are notified, or the child is delivered to an intake worker under s. 48.20 (3), whichever occurs first. If the child is delivered to the intake worker before the parent, guardian and legal custodian are notified, the intake worker, or another person at his or her

direction, shall continue the attempt to notify until the parent, guardian and legal custodian of the child are notified.

(3) Taking into custody is not an arrest except for the purpose of determining whether the taking into custody or the obtaining of any evidence is lawful.

**History:** 1977 c. 354, 449; 1979 c. 300; 1985 a. 176; 1989 a. 31, 56, 107; 1993 a. 16, 56, 377, 490; 1995 a. 27, 77; 1997 a. 292.

A viable fetus is not a "person" within the definition of a child under s. 48.02 (2). A court may not order protective custody of a fetus by requiring custody of the mother. *State ex rel. Angela M.W. v. Kruzicki*, 209 Wis. 2d 112, 561 N.W.2d 729 (1997), 95-2480.

**48.193 Taking an adult expectant mother into custody.** (1) An adult expectant mother of an unborn child may be taken into custody under any of the following:

(a) A warrant.

(b) A capias issued by a judge under s. 48.28.

(c) An order of the judge if made upon a showing satisfactory to the judge that due to the adult expectant mother's habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered unless the adult expectant mother is taken into custody and that the adult expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her. The order shall specify that the adult expectant mother be held in custody under s. 48.207 (1m).

(d) Circumstances in which a law enforcement officer believes on reasonable grounds that any of the following conditions exists:

1. A capias or warrant for the apprehension of the adult expectant mother has been issued in this state or in another state.

2. There is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered due to the adult expectant mother's habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, unless the adult expectant mother is taken into custody.

3. The adult expectant mother has violated the conditions of an order under s. 48.213 (3) or the conditions of an order for temporary physical custody by an intake worker.

(2) When an adult expectant mother of an unborn child is taken into physical custody as provided in this section, the person taking the adult expectant mother into custody shall immediately attempt to notify an adult relative or friend of the adult expectant mother by the most practical means. The person

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taking the adult expectant mother into custody shall continue such attempt until an adult relative or friend is notified, or the adult expectant mother is delivered to an intake worker under s. 48.203 (2), whichever occurs first. If the adult expectant mother is delivered to the intake worker before an adult relative or friend is notified, the intake worker, or another person at his or her direction, shall continue the attempt to notify until an adult relative or friend of the adult expectant mother is notified.

(3) Taking into custody is not an arrest except for the purpose of determining whether the taking into custody or the obtaining of any evidence is lawful.

**History:** 1997 a. 292.

**48.195 Taking a newborn child into custody.** (1) **TAKING CHILD INTO CUSTODY.** In addition to being taken into custody under s. 48.19, a child whom a law enforcement officer, emergency medical technician, or hospital staff member reasonably believes to be 72 hours old or younger may be taken into custody under circumstances in which a parent of the child relinquishes custody of the child to the law enforcement officer, emergency medical technician, or hospital staff member and does not express an intent to return for the child. If a parent who wishes to relinquish custody of his or her child under this subsection is unable to travel to a sheriff's office, police station, fire station, hospital, or other place where a law enforcement officer, emergency medical technician, or hospital staff member is located, the parent may dial the telephone number "911" or, in an area in which the telephone number "911" is not available, the number for an emergency medical service provider, and the person receiving the call shall dispatch a law enforcement officer or emergency medical technician to meet the parent and take the child into custody. A law enforcement officer, emergency medical technician, or hospital staff member who takes a child into custody under this subsection shall take any action necessary to protect the health and safety of the child, shall, within 24 hours after taking the child into custody, deliver the child to the intake worker under s. 48.20, and shall, within 5 days after taking the child into custody, file a birth certificate for the child under s. 69.14 (3).

(2) **ANONYMITY AND CONFIDENTIALITY.** (a) Except as provided in this paragraph, a parent who relinquishes custody of a child under sub. (1) and any person who assists the parent in that relinquishment have the right to remain anonymous. The exercise of that right shall not affect the manner in which a law enforcement officer, emergency medical technician, or hospital staff member performs his or her duties under this section. No person may induce or coerce or attempt to induce or coerce a parent or person assisting a parent who wishes to remain anonymous into revealing his or her identity, unless the person has reasonable cause to suspect that the child has been the

victim of abuse or neglect, as defined in s. 48.981 (1) (d), or that the person assisting the parent is coercing the parent into relinquishing custody of the child.

(b) A parent who relinquishes custody of a child under sub. (1) and any person who assists the parent in that relinquishment may leave the presence of the law enforcement officer, emergency medical technician, or hospital staff member who took custody of the child at any time, and no person may follow or pursue the parent or person assisting the parent, unless the person has reasonable cause to suspect that the child has been the victim of abuse or neglect, as defined in s. 48.981 (1) (d), or that the person assisting the parent has coerced the parent into relinquishing custody of the child.

(c) No officer, employee, or agent of this state or of a political subdivision of this state may attempt to locate or ascertain the identity of a parent who relinquishes custody of a child under sub. (1) or any person who assists the parent in that relinquishment, unless the officer, employee, or agent has reasonable cause to suspect that the child has been the victim of abuse or neglect, as defined in s. 48.981 (1) (d), or that the person assisting the parent has coerced the parent into relinquishing custody of the child.

(d) Any person who obtains any information relating to the relinquishment of a child under sub. (1) shall keep that information confidential and may not disclose that information, except to the following persons:

1. The birth parent of the child, if the birth parent has waived his or her right under par. (a) to remain anonymous, or the adoptive parent of the child, if the child is later adopted.
2. Appropriate staff of the department, county department, or licensed child welfare agency that is providing services to the child.
3. A person authorized to provide or providing intake or dispositional services under s. 48.067, 48.069, or 48.10.
4. An attending physician for purposes of diagnosis and treatment of the child.
5. The child's foster parent, treatment foster parent, or other person having physical custody of the child.
6. A court conducting proceedings under s. 48.21, proceedings relating to a petition under s. 48.13 (2m) or 48.42, or dispositional proceedings under subch. VI or VIII relating to the child, the county corporation counsel, district attorney, or agency legal counsel representing the interests of the public in those proceedings, or the guardian ad litem representing the interests of the child in those proceedings.
7. A tribal court, or other adjudicative body authorized by an American Indian tribe or band to perform child welfare functions, that is exercising jurisdiction over proceedings relating to the child, an attorney representing the interests of the

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American Indian tribe or band in those proceedings, or an attorney representing the interests of the child in those proceedings.

(3) **INFORMATION FOR PARENT.** (a) Subject to par. (b), a law enforcement officer, emergency medical technician, or hospital staff member who takes a child into custody under sub. (1) shall make available to the parent who relinquishes custody of the child the maternal and child health toll-free telephone number maintained by the department under 42 USC 705 (a) (5) (E).

(b) The decision whether to accept the information made available under par. (a) is entirely voluntary on the part of the parent. No person may induce or coerce or attempt to induce or coerce any parent into accepting that information.

(4) **IMMUNITY FROM LIABILITY.** (a) Any parent who relinquishes custody of his or her child under sub. (1) and any person who assists the parent in that relinquishment are immune from any civil or criminal liability for any good faith act or omission in connection with that relinquishment. The immunity granted under this paragraph includes immunity for exercising the right to remain anonymous under sub. (2) (a), the right to leave at any time under sub. (2) (b), and the right not to accept any information under sub. (3) (b) and immunity from prosecution under s. 948.20 for abandonment of a child or under s. 948.21 for neglecting a child.

(b) Any law enforcement officer, emergency medical technician, or hospital staff member who takes a child into custody under sub. (1) is immune from any civil liability to the child's parents, or any criminal liability for any good faith act or omission occurring solely in connection with the act of receiving custody of the child from the child's parents, but is not immune from any civil or criminal liability for any act or omission occurring in subsequently providing care for the child.

(c) In any civil or criminal proceeding, the good faith of a person specified in par. (a) or (b) is presumed. This presumption may be overcome only by clear and convincing evidence.

(5) **MEDICAL ASSISTANCE ELIGIBILITY.** A child who is taken into custody under sub. (1) is presumed to be eligible for medical assistance under s. 49.46 or 49.47.

(6) **RULES.** The department shall promulgate rules to implement this section. In promulgating those rules, the department shall consider the different circumstances under which a parent might relinquish custody of a child under sub. (1). The rules shall include rules prescribing a means by which a parent who relinquishes custody of his or her child under sub. (1) may, until the granting of an order terminating parental rights, choose to be identified as the child's parent.

**History:** 2001 a. 2.

**Cross Reference:** See also ch. HFS 39, Wis. adm. code.

#### **48.20 Release or delivery of child from custody. (2)**

(ag) Except as provided in pars. (b) to (d), a person taking a child into custody shall make every effort to release the child immediately to the child's parent, guardian or legal custodian, or, if the child is an Indian child, the child's Indian custodian.

(b) If the child's parent, guardian or legal custodian is unavailable, unwilling or unable to provide supervision for the child, the person who took the child into custody may release the child to a responsible adult after counseling or warning the child as may be appropriate.

(c) If the child is 15 years of age or older, the person who took the child into custody may release the child without immediate adult supervision after counseling or warning the child as may be appropriate.

(d) If the child is a runaway, the person who took the child into custody may release the child to a home authorized under s. 48.227.

(3) If the child is released under sub. (2) (b) to (d), the person who took the child into custody shall immediately notify the child's parent, guardian and legal custodian of the time and circumstances of the release and the person, if any, to whom the child was released. If the child is not released under sub. (2), the person who took the child into custody shall arrange in a manner determined by the court and law enforcement agencies for the child to be interviewed by the intake worker under s. 48.067 (2), and shall make a statement in writing with supporting facts of the reasons why the child was taken into physical custody and shall give any child 12 years of age or older a copy of the statement in addition to giving a copy to the intake worker. When the intake interview is not done in person, the report may be read to the intake worker.

(4) If the child is believed to be suffering from a serious physical condition which requires either prompt diagnosis or prompt treatment, the person taking the child into physical custody, the intake worker or other appropriate person shall deliver the child to a hospital as defined in s. 50.33 (2) (a) and (c) or physician's office.

(4m) If the child is an expectant mother and if the unborn child or child expectant mother is believed to be suffering from a serious physical condition which requires either prompt diagnosis or prompt treatment, the person taking the child expectant mother into physical custody, the intake worker or other appropriate person shall deliver the child expectant mother to a hospital as defined in s. 50.33 (2) (a) and (c) or physician's office.

(5) If the child is believed to be mentally ill, drug dependent or developmentally disabled, and exhibits conduct which constitutes a substantial probability of physical harm to the child or to others, or a very substantial probability of physical

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impairment or injury to the child exists due to the impaired judgment of the child, and the standards of s. 51.15 are met, the person taking the child into physical custody, the intake worker or other appropriate person shall proceed under s. 51.15.

(6) If the child is believed to be an intoxicated person who has threatened, attempted or inflicted physical harm on himself or herself or on another and is likely to inflict such physical harm unless committed, or is incapacitated by alcohol, the person taking the child into physical custody, the intake worker or other appropriate person shall proceed under s. 51.45 (11).

(7) (a) When a child is interviewed by an intake worker, the intake worker shall inform any child who is alleged to be in need of protection or services and who is 12 years of age or older of his or her right to counsel.

(b) The intake worker shall review the need to hold the child in custody and shall make every effort to release the child from custody as provided in par. (c). The intake worker shall base his or her decision as to whether to release the child or to continue to hold the child in custody on the criteria specified in s. 48.205 (1) and criteria established under s. 48.06 (1) or (2).

(c) The intake worker may release the child:

1. To a parent, guardian or legal custodian, or, if the child is an Indian child, the child's Indian custodian, or, if the parent, guardian or legal custodian or Indian custodian is unavailable, unwilling, or unable to provide supervision for the child, release the child to a responsible adult, counseling or warning the child as may be appropriate, or, if a child is 15 years of age or older, release the child without immediate adult supervision, counseling or warning the child as may be appropriate; or

2. In the case of a runaway child, to a home authorized under s. 48.227.

(d) If the child is released from custody, the intake worker shall immediately notify the child's parent, guardian and legal custodian, or, if the child is an Indian child, the child's Indian custodian of the time and circumstances of the release and the person, if any, to whom the child was released.

(8) If a child is held in custody, the intake worker shall notify the child's parent, guardian and legal custodian, or, if the child is an Indian child, the child's Indian custodian of the reasons for holding the child in custody and of the child's whereabouts unless there is reason to believe that notice would present imminent danger to the child. The parent, guardian and legal custodian or Indian custodian shall also be notified of the time and place of the detention hearing required under s. 48.21, the nature and possible consequences of that hearing, and the right to present and cross-examine witnesses at the hearing. If the parent, guardian or legal custodian or Indian custodian is not immediately available, the intake worker or another person designated by the court shall provide notice as soon as possible.

When the child is 12 years of age or older, the child shall receive the same notice about the detention hearing as the parent, guardian or legal custodian or Indian custodian. The intake worker shall notify both the child and the child's parent, guardian or legal custodian or Indian custodian. When the child is an expectant mother who has been taken into custody under s. 48.19 (1) (cm) or (d) 8., the unborn child, through the unborn child's guardian ad litem, shall receive the same notice about the whereabouts of the child expectant mother, about the reasons for holding the child expectant mother in custody and about the detention hearing as the child expectant mother and her parent, guardian or legal custodian. The intake worker shall notify the child expectant mother, her parent, guardian or legal custodian and the unborn child, by the unborn child's guardian ad litem.

**History:** 1977 c. 354, 449; 1979 c. 300; 1983 a. 189 s. 329 (5); 1993 a. 16, 56, 98, 385; 1995 a. 27, 77; 1997 a. 292.

#### 48.203 Release or delivery of adult expectant mother from custody. (1) A person taking an adult expectant

mother of an unborn child into custody shall make every effort to release the adult expectant mother to an adult relative or friend of the adult expectant mother after counseling or warning the adult expectant mother as may be appropriate or, if an adult relative or friend is unavailable, unwilling or unable to accept the release of the adult expectant mother, the person taking the adult expectant mother into custody may release the adult expectant mother under the adult expectant mother's own supervision after counseling or warning the adult expectant mother as may be appropriate.

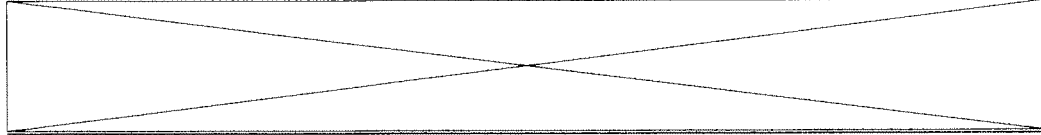
(2) If the adult expectant mother is not released under sub. (1), the person who took the adult expectant mother into custody shall arrange in a manner determined by the court and law enforcement agencies for the adult expectant mother to be interviewed by the intake worker under s. 48.067 (2), and shall make a statement in writing with supporting facts of the reasons why the adult expectant mother was taken into physical custody and shall give the adult expectant mother a copy of the statement in addition to giving a copy to the intake worker. When the intake interview is not done in person, the report may be read to the intake worker.

(3) If the unborn child or adult expectant mother is believed to be suffering from a serious physical condition which requires either prompt diagnosis or prompt treatment, the person taking the adult expectant mother into physical custody, the intake worker or other appropriate person shall deliver the adult expectant mother to a hospital, as defined in s. 50.33 (2) (a) and (c), or physician's office.

(4) If the adult expectant mother is believed to be mentally ill, drug dependent or developmentally disabled, and exhibits conduct which constitutes a substantial probability of physical

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harm to herself or others, or a substantial probability of physical impairment or injury to the adult expectant mother exists due to the impaired judgment of the adult expectant mother, and the standards of s. 51.15 are met, the person taking the adult expectant mother into physical custody, the intake worker or other appropriate person shall proceed under s. 51.15.

(5) If the adult expectant mother is believed to be an intoxicated person who has threatened, attempted or inflicted physical harm on herself or on another and is likely to inflict such physical harm unless committed, or is incapacitated by alcohol, the person taking the adult expectant mother into physical custody, the intake worker or other appropriate person shall proceed under s. 51.45 (11).

(6) (a) When an adult expectant mother is interviewed by an intake worker, the intake worker shall inform the adult expectant mother of her right to counsel.

(b) The intake worker shall review the need to hold the adult expectant mother in custody and shall make every effort to release the adult expectant mother from custody as provided in par. (c). The intake worker shall base his or her decision as to whether to release the adult expectant mother or to continue to hold the adult expectant mother in custody on the criteria specified in s. 48.205 (1m) and criteria established under s. 48.06 (1) or (2).

(c) The intake worker may release the adult expectant mother to an adult relative or friend of the adult expectant mother after counseling or warning the adult expectant mother as may be appropriate or, if an adult relative or friend is unavailable, unwilling or unable to accept the release of the adult expectant mother, the intake worker may release the adult expectant mother under the adult expectant mother's own supervision after counseling or warning the adult expectant mother as may be appropriate.

(7) If an adult expectant mother is held in custody, the intake worker shall notify the adult expectant mother and the unborn child, through the unborn child's guardian ad litem, of the reasons for holding the adult expectant mother in custody, the time and place of the detention hearing required under s. 48.213, the nature and possible consequences of that hearing, and the right to present and cross-examine witnesses at the hearing.

History: 1997 a. 292.

**48.205 Criteria for holding a child or expectant mother in physical custody.** (1) A child may be held under s. 48.207 (1), 48.208 or 48.209 if the intake worker determines that there is probable cause to believe the child is within the jurisdiction of the court and:

(a) Probable cause exists to believe that if the child is not held he or she will cause injury to himself or herself or be subject to injury by others.

(am) Probable cause exists to believe that if the child is not held he or she will be subject to injury by others, based on a determination under par. (a) or a finding under s. 48.21 (4) that if another child in the home is not held that child will be subject to injury by others.

(b) Probable cause exists to believe that the parent, guardian or legal custodian of the child or other responsible adult is neglecting, refusing, unable or unavailable to provide adequate supervision and care and that services to ensure the child's safety and well-being are not available or would be inadequate.

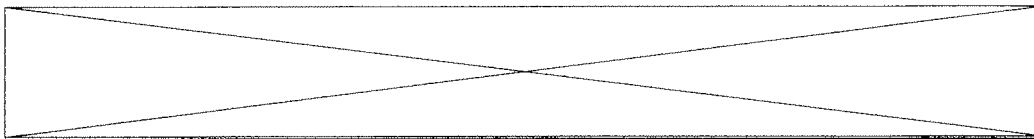
(bm) Probable cause exists to believe that the child meets the criteria specified in par. (b), based on a determination under par. (b) or a finding under s. 48.21 (4) that another child in the home meets those criteria.

(c) Probable cause exists to believe that the child will run away or be taken away so as to be unavailable for proceedings of the court or its officers.

(d) Probable cause exists to believe that the child is an expectant mother, that if the child expectant mother is not held, there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered by the child expectant mother's habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, and that the child expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her.

(1m) An adult expectant mother of an unborn child may be held under s. 48.207 (1m) if the intake worker determines that there is probable cause to believe that the adult expectant mother is within the jurisdiction of the court, to believe that if the adult expectant mother is not held, there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered by the adult expectant mother's habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, and to believe that the adult expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her.

(2) The criteria for holding a child or the expectant mother of an unborn child in custody specified in this section shall



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govern the decision of all persons responsible for determining whether the action is appropriate.

**History:** 1977 c. 354; 1979 c. 300; 1983 a. 399; 1989 a. 31, 107; 1993 a. 16, 377, 395; 1995 a. 27, 77, 275; 1997 a. 292; 1999 a. 83.

**NOTE:** 1993 Wis. Act 395, which creates subs. (1) (am) and (bm), contains extensive explanatory notes.

**48.207 Places where a child or expectant mother may be held in nonsecure custody.** (1) A child held in physical custody under s. 48.205 (1) may be held in any of the following places:

(a) The home of a parent or guardian, except that a child may not be held in the home of a parent or guardian if the parent or guardian has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated, unless the person making the custody decision determines by clear and convincing evidence that the placement would be in the best interests of the child. The person making the custody decision shall consider the wishes of the child in making that determination.

(b) The home of a relative, except that a child may not be held in the home of a relative if the relative has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated, unless the person making the custody decision determines by clear and convincing evidence that the placement would be in the best interests of the child. The person making the custody decision shall consider the wishes of the child in making that determination.

(c) A licensed foster home or a licensed treatment foster home provided the placement does not violate the conditions of the license.

(cm) A licensed group home provided that the placement does not violate the conditions of the license.

(d) A nonsecure facility operated by a licensed child welfare agency.

(e) A licensed private or public shelter care facility.

(f) The home of a person not a relative, if the placement does not exceed 30 days, though the placement may be extended for an additional 30 days for cause by the court, and if the person has not had a foster home or treatment foster home license refused, revoked or suspended within the last 2 years.

(g) A hospital as defined in s. 50.33 (2) (a) and (c) or physician's office if the child is held under s. 48.20 (4) or (4m).

(h) A place listed in s. 51.15 (2) if the child is held under s. 48.20 (5).

(i) An approved public treatment facility for emergency treatment if the child is held under s. 48.20 (6).

(k) A facility under s. 48.58.

**(1m)** An adult expectant mother of an unborn child held in physical custody under s. 48.205 (1m) may be held in any of the following places:

(a) The home of an adult relative or friend of the adult expectant mother.

(b) A licensed community-based residential facility, as defined in s. 50.01 (1g), if the placement does not violate the conditions of the license.

(c) A hospital, as defined in s. 50.33 (2) (a) and (c), or a physician's office if the adult expectant mother is held under s. 48.203 (3).

(d) A place listed in s. 51.15 (2) if the adult expectant mother is held under s. 48.203 (4).

(e) An approved public treatment facility for emergency treatment if the adult expectant mother is held under s. 48.203 (5).

**(2)** (a) If a facility listed in sub. (1) (b) to (k) is used to hold a child in custody, or if supervisory services of a home detention program are provided to a child held under sub. (1) (a), the authorized rate of the facility for the care of the child or the authorized rate for those supervisory services shall be paid by the county in a county having a population of less than 500,000 or by the department in a county having a population of 500,000 or more. If no authorized rate has been established, a reasonable sum to be fixed by the court shall be paid by the county in a county having a population of less than 500,000 or by the department in a county having a population of 500,000 or more for the supervision or care of the child.

(b) If a facility listed in sub. (1m) (b) to (e) is used to hold an expectant mother of an unborn child in custody, or if supervisory services of a home detention program are provided to an expectant mother held under sub. (1m) (a), the authorized rate of the facility for the care of the expectant mother or the authorized rate for those supervisory services shall be paid by the county in a county having a population of less than 500,000 or by the department in a county having a population of 500,000 or more. If no authorized rate has been established, a reasonable sum to be fixed by the court shall be paid by the county in a county having a population of less than 500,000 or by the department in a county having a population of 500,000 or more for the supervision or care of the expectant mother.

**(3)** A child taken into custody under s. 48.981 may be held in a hospital, foster home, treatment foster home, relative's home or other appropriate medical or child welfare facility which is not used primarily for the detention of delinquent children.

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**History:** 1977 c. 354, 355, 447; 1979 c. 300; 1983 a. 172; 1983 a. 189 s. 329 (5); 1985 a. 332; 1993 a. 446; 1997 a. 27, 292; 1999 a. 9.

**48.208 Criteria for holding a child in a secure detention facility.** A child may be held in a secure detention facility if the intake worker determines that one of the following conditions applies:

(3) The child consents in writing to being held in order to protect him or her from an imminent physical threat from another and such secure custody is ordered by the judge in a protective order.

(4) Probable cause exists to believe that the child, having been placed in nonsecure custody by an intake worker under s. 48.207 (1) or by the judge or a circuit court commissioner under s. 48.21 (4), has run away or committed a delinquent act and no other suitable alternative exists.

**History:** 1977 c. 354; 1979 c. 300; 1985 a. 176; 1993 a. 16, 377, 385, 491; 1995 a. 27, 77; 1997 a. 292; 2001 a. 61.

Courts may hold juveniles in contempt of court, but only under the criteria under s. 48.205 and this section. 70 Atty. Gen. 98.

**48.209 Criteria for holding a child in a county jail.** Subject to the provisions of s. 48.208, a county jail may be used as a secure detention facility if the criteria under either sub. (1) or (2) are met:

(1) There is no other secure detention facility approved by the department of corrections or a county which is available and:

(a) The jail meets the standards for secure detention facilities established by the department of corrections;

(b) The child is held in a room separated and removed from incarcerated adults;

(c) The child is not held in a cell designed for the administrative or disciplinary segregation of adults;

(d) Adequate supervision is provided; and

(e) The judge reviews the status of the child every 3 days.

(2) The child presents a substantial risk of physical harm to other persons in the secure detention facility, as evidenced by previous acts or attempts, which can only be avoided by transfer to the jail. The provisions of sub. (1) (a) to (e) shall be met. The child shall be given a hearing and transferred only upon order of the judge.

**History:** 1977 c. 354; 1989 a. 31; 1993 a. 98; 1995 a. 77.

**Cross Reference:** See also s. DOC 346.01, Wis. adm. code.

**48.21 Hearing for child in custody.** (1) **HEARING; WHEN HELD.** (a) If a child who has been taken into custody is not released under s. 48.20, a hearing to determine whether the child shall continue to be held in custody under the criteria of ss. 48.205 to 48.209 shall be conducted by the judge or a circuit court commissioner within 48 hours of the time the decision to hold the child was made, excluding Saturdays, Sundays, and

legal holidays. By the time of the hearing a petition under s. 48.25 shall be filed, except that no petition need be filed where a child is taken into custody under s. 48.19 (1) (b) or (d) 2. or 7. or where the child is a runaway from another state, in which case a written statement of the reasons for holding a child in custody shall be substituted if the petition is not filed. If no hearing has been held within 48 hours, excluding Saturdays, Sundays, and legal holidays, or if no petition or statement has been filed at the time of the hearing, the child shall be released except as provided in par. (b). A parent not present at the hearing shall be granted a rehearing upon request for good cause shown.

(b) If no petition has been filed by the time of the hearing, a child may be held in custody with approval of the judge or circuit court commissioner for an additional 72 hours from the time of the hearing, excluding Saturdays, Sundays and legal holidays, only if, as a result of the facts brought forth at the hearing, the judge or circuit court commissioner determines that probable cause exists to believe that the child is an imminent danger to himself or herself or to others, that probable cause exists to believe that the parent, guardian or legal custodian of the child or other responsible adult is neglecting, refusing, unable or unavailable to provide adequate supervision and care or, if the child is an expectant mother who was taken into custody under s. 48.19 (1) (cm) or (d) 8., that probable cause exists to believe that there is a substantial risk that if the child expectant mother is not held, the physical health of the unborn child, and of the child when born, will be seriously affected or endangered by the child expectant mother's habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, and to believe that the child expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her. The extension may be granted only once for any petition. In the event of failure to file a petition within the extension period provided for in this paragraph, the judge or circuit court commissioner shall order the child's immediate release from custody.

(3) **PROCEEDINGS CONCERNING CHILDREN IN NEED OF PROTECTION OR SERVICES AND UNBORN CHILDREN IN NEED OF PROTECTION OR SERVICES AND THEIR CHILD EXPECTANT MOTHERS.** (ag) Proceedings concerning a child who comes within the jurisdiction of the court under s. 48.13 or an unborn child and a child expectant mother of the unborn child who come within the jurisdiction of the court under s. 48.133 shall be conducted according to this subsection.

(am) The parent, guardian, or legal custodian or Indian custodian may waive his or her right to participate in the

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hearing under this section. After any waiver, a rehearing shall be granted at the request of the parent, guardian, legal custodian, Indian custodian, or any other interested party for good cause shown.

(b) If present at the hearing, a copy of the petition shall be given to the parent, guardian or legal custodian or Indian custodian, and to the child if he or she is 12 years of age or older, before the hearing begins. If the child is an expectant mother who has been taken into custody under s. 48.19 (1) (cm) or (d) 8., a copy of the petition shall also be given to the unborn child, through the unborn child's guardian ad litem, before the hearing begins. Prior notice of the hearing shall be given to the child's parent, guardian and legal custodian and Indian custodian, to the child if he or she is 12 years of age or older and, if the child is an expectant mother who has been taken into custody under s. 48.19 (1) (cm) or (d) 8., to the unborn child, through the unborn child's guardian ad litem, in accordance with s. 48.20 (8).

(d) Prior to the commencement of the hearing, the parent, guardian or legal custodian or Indian custodian shall be informed by the court of the allegations that have been made or may be made, the nature and possible consequences of this hearing as compared to possible future hearings, the right to confront and cross-examine witnesses and the right to present witnesses.

(e) If the parent, guardian or legal custodian or Indian custodian or the child is not represented by counsel at the hearing and the child is continued in custody as a result of the hearing, the parent, guardian, legal custodian or Indian custodian or child may request through counsel subsequently appointed or retained or through a guardian ad litem that the order to hold the child in custody be reheard. If the request is made, a rehearing shall take place as soon as possible. Any order to hold the child in custody shall be subject to rehearing for good cause, whether or not counsel was present.

**(3m) PARENTAL NOTICE REQUIRED.** If the child has been taken into custody because he or she committed an act which resulted in personal injury or damage to or loss of the property of another, the court, prior to the commencement of any hearing under this section, shall attempt to notify the child's parents of the possibility of disclosure of the identity of the child and the parents, of the child's police records and of the outcome of proceedings against the child for use in civil actions for damages against the child or the parents and of the parents' potential liability for acts of their children. If the court is unable to provide the notice before commencement of the hearing, it shall provide the child's parents with the specified information in writing as soon as possible after the hearing.

**(4) CONTINUATION OF CUSTODY.** If the judge or circuit court commissioner finds that the child should be continued in

custody under the criteria of s. 48.205, he or she shall enter one of the following orders:

(a) Place the child with a parent, guardian, legal custodian or other responsible person and may impose reasonable restrictions on the child's travel, association with other persons or places of abode during the period of placement, including a condition requiring the child to return to other custody as requested; or subject the child to the supervision of an agency agreeing to supervise the child. Reasonable restrictions may be placed upon the conduct of the parent, guardian, legal custodian or other responsible person which may be necessary to ensure the safety of the child.

(b) Order the child held in an appropriate manner under s. 48.207, 48.208 or 48.209.

**(5) ORDERS IN WRITING.** (a) All orders to hold in custody shall be in writing, listing the reasons and criteria forming the basis for the decision.

(b) An order relating to a child held in custody outside of his or her home shall also include all of the following:

1. A finding that continued placement of the child in his or her home would be contrary to the welfare of the child. Unless the judge or circuit court commissioner finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies, the order shall in addition include a finding as to whether the person who took the child into custody and the intake worker have made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns, and a finding as to whether the person who took the child into custody and the intake worker have made reasonable efforts to make it possible for the child to return safely home or, if for good cause shown sufficient information is not available for the judge or circuit court commissioner to make a finding as to whether those reasonable efforts were made to prevent the removal of the child from the home, a finding as to whether those reasonable efforts were made to make it possible for the child to return safely home and an order for the county department, department, in a county having a population of 500,000 or more, or agency primarily responsible for providing services to the child under the custody order to file with the court sufficient information for the judge or circuit court commissioner to make a finding as to whether those reasonable efforts were made to prevent the removal of the child from the home by no later than 5 days after the date of the order.

2. If the child is held in custody outside the home in a placement recommended by the intake worker, a statement that the court approves the placement recommended by the intake worker or, if the child is placed outside the home in a placement other than a placement recommended by the intake worker, a statement that the court has given bona fide consideration to the

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recommendations made by the intake worker and all parties relating to the placement of the child.

3. If the judge or circuit court commissioner finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, a determination that the county department, department, in a county having a population of 500,000 or more, or agency primarily responsible for providing services under the custody order is not required to make reasonable efforts with respect to the parent to make it possible for the child to return safely to his or her home.

(c) The judge or circuit court commissioner shall make the findings specified in par. (b) 1. and 3. on a case-by-case basis based on circumstances specific to the child and shall document or reference the specific information on which those findings are based in the custody order. A custody order that merely references par. (b) 1. or 3. without documenting or referencing that specific information in the custody order or an amended custody order that retroactively corrects an earlier custody order that does not comply with this paragraph is not sufficient to comply with this paragraph.

(d) 1. If the judge or circuit court commissioner finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the judge or circuit court commissioner shall hold a hearing within 30 days after the date of that finding to determine the permanency plan for the child. If a hearing is held under this subdivision, the agency responsible for preparing the permanency plan shall file the permanency plan with the court not less than 5 days before the date of the hearing.

2.a. If a hearing is held under subd. 1., at least 10 days before the date of the hearing the court shall notify the child, any parent, guardian, and legal custodian of the child, and any foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) of the child of the time, place, and purpose of the hearing.

b. If the court knows or has reason to believe that the child is an Indian child, the court shall notify, in addition to those individuals identified in subpar. a., any Indian custodian or Indian tribe of the child. Notification shall be by registered mail with return receipt requested and shall include a description of the pending proceedings and of their right of intervention. The parent, Indian custodian, or Indian tribe of the child shall, upon request, be granted up to 20 additional days to prepare for the proceeding.

3. The court shall give a foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) who is notified of a hearing under subd. 2. an opportunity to be heard at the hearing by permitting the foster parent, treatment foster parent, or other physical custodian to make a written or oral

statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issues to be determined at the hearing. A foster parent, treatment foster parent, or other physical custodian who receives a notice of a hearing under subd. 2. and an opportunity to be heard under this subdivision does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and opportunity to be heard.

(6) AMENDMENT OF ORDER. An order placing a child under sub. (4) (a) on conditions specified in this section may at any time be amended, with notice, so as to place the child in another form of custody for failure to conform to the conditions originally imposed. A child may be transferred to secure custody if he or she meets the criteria of s. 48.208.

(7) INFORMAL DISPOSITION. If the judge or circuit court commissioner determines that the best interests of the child and the public are served or, in the case of a child expectant mother who has been taken into custody under s. 48.19 (1) (cm) or (d) 8., that the best interests of the unborn child and the public are served, he or she may enter a consent decree under s. 48.32 or order the petition dismissed and refer the matter to the intake worker for informal disposition in accordance with s. 48.245.

**History:** 1977 c. 354, 447; 1979 c. 300; 1983 a. 399; 1985 a. 311; 1993 a. 98; 1995 a. 27, 77, 275; 1997 a. 35, 237, 292; 2001 a. 16, 61, 109.

The period under sub. (1) (a) runs from the time the intake worker decides to hold the child. *Curtis W. v. State*, 192 Wis. 2d 719, 531 N.W.2d 633 (Ct. App. 1995).

#### 48.213 Hearing for adult expectant mother in custody. (1) HEARING; WHEN HELD.

(a) If an adult expectant mother of an unborn child who has been taken into custody is not released under s. 48.203, a hearing to determine whether the adult expectant mother shall continue to be held in custody under the criteria of s. 48.205 (1m) shall be conducted by the judge or a circuit court commissioner within 48 hours after the time that the decision to hold the adult expectant mother was made, excluding Saturdays, Sundays and legal holidays. By the time of the hearing a petition under s. 48.25 shall be filed, except that no petition need be filed when an adult expectant mother is taken into custody under s. 48.193 (1) (b) or (d) 1. or 3., in which case a written statement of the reasons for holding the adult expectant mother in custody shall be substituted if the petition is not filed. If no hearing has been held within those 48 hours, excluding Saturdays, Sundays and legal holidays, or if no petition or statement has been filed at the time of the hearing, the adult expectant mother shall be released except as provided in par. (b).

(b) If no petition has been filed by the time of the hearing, an adult expectant mother of an unborn child may be held in custody with the approval of the judge or circuit court commissioner for an additional 72 hours after the time of the

hearing, excluding Saturdays, Sundays and legal holidays, only if, as a result of the facts brought forth at the hearing, the judge or circuit court commissioner determines that probable cause exists to believe that there is a substantial risk that if the adult expectant mother is not held, the physical health of the unborn child, and of the child when born, will be seriously affected or endangered by the adult expectant mother's habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, and to believe that the adult expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her. The extension may be granted only once for any petition. In the event of failure to file a petition within the extension period provided for in this paragraph, the judge or circuit court commissioner shall order the adult expectant mother's immediate release from custody.

**(2) PROCEEDINGS CONCERNING UNBORN CHILDREN IN NEED OF PROTECTION OR SERVICES AND THEIR ADULT EXPECTANT MOTHERS.** (a) Proceedings concerning an unborn child and an adult expectant mother of the unborn child who come within the jurisdiction of the court under s. 48.133 shall be conducted according to this subsection.

(b) The adult expectant mother may waive the hearing under this section. After any waiver, a hearing shall be granted at the request of any interested party.

(c) A copy of the petition shall be given to the adult expectant mother, and to the unborn child, through the unborn child's guardian ad litem, before the hearing begins. Prior notice of the hearing shall be given to the adult expectant mother and unborn child in accordance with s. 48.203 (7).

(d) Prior to the commencement of the hearing, the adult expectant mother and the unborn child, through the unborn child's guardian ad litem, shall be informed by the court of the allegations that have been made or may be made, the nature and possible consequences of this hearing as compared to possible future hearings, the right to confront and cross-examine witnesses and the right to present witnesses.

(e) If the adult expectant mother is not represented by counsel at the hearing and the adult expectant mother is continued in custody as a result of the hearing, the adult expectant mother may request through counsel subsequently appointed or retained or through a guardian ad litem that the order to hold the adult expectant mother in custody be reheard. If the request is made, a rehearing shall take place as soon as possible. Any order to hold the adult expectant mother in custody shall be subject to rehearing for good cause, whether or not counsel was present.

**(3) CONTINUATION OF CUSTODY.** If the judge or circuit court commissioner finds that the adult expectant mother should be continued in custody under the criteria of s. 48.205 (1m), the judge or circuit court commissioner shall enter one of the following orders:

(a) Release the adult expectant mother and impose reasonable restrictions on the adult expectant mother's travel, association with other persons or places of abode during the period of the order, including a condition requiring the adult expectant mother to return to other custody as requested; or subject the adult expectant mother to the supervision of an agency agreeing to supervise the adult expectant mother. Reasonable restrictions may be placed upon the conduct of the adult expectant mother which may be necessary to ensure the safety of the unborn child and of the child when born.

(b) Order the adult expectant mother to be held in an appropriate manner under s. 48.207 (1m).

**(4) ORDERS IN WRITING.** All orders to hold an adult expectant mother of an unborn child in custody shall be in writing, listing the reasons and criteria forming the basis for the decision.

**(5) AMENDMENT OF ORDER.** An order under sub. (3) (a) imposing restrictions on an adult expectant mother of an unborn child may at any time be amended, with notice, so as to place the adult expectant mother in another form of custody for failure of the adult expectant mother to conform to the conditions originally imposed.

**(6) INFORMAL DISPOSITION.** If the judge or circuit court commissioner determines that the best interests of the unborn child and the public are served, the judge or circuit court commissioner may enter a consent decree under s. 48.32 or order the petition dismissed and refer the matter to the intake worker for informal disposition in accordance with s. 48.245.

**History:** 1997 a. 292; 2001 a. 61.

**48.215 Mother-young child care program.** Sections 48.19 to 48.21 do not apply to children participating in the mother-young child care program under s. 301.049.

**History:** 1991 a. 39.

**48.227 Runaway homes.** (1) Nothing contained in this section prohibits a home licensed under s. 48.48 or 48.75 from providing housing and services to a runaway child with the consent of the child and the consent of the child's parent, guardian or legal custodian, under the supervision of a county department, a child welfare agency or the department. When the parent, guardian or legal custodian and the child both consent to the provision of these services and the child has not been taken into custody, no hearing as described in this section is required.

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(2) Any person who operates a home under sub. (1) and licensed under s. 48.48 or 48.75, when engaged in sheltering a runaway child without the consent of the child's parent, guardian or legal custodian, shall notify the intake worker of the presence of the child in the home within 12 hours. The intake worker shall notify the parent, guardian and legal custodian as soon as possible of the child's presence in that home. A hearing shall be held under sub. (4). The child shall not be removed from the home except with the approval of the court under sub. (4). This subsection does not prohibit the parent, guardian or legal custodian from conferring with the child or the person operating the home.

(3) For runaway children who have been taken into custody and then released, the judge may, with the agreement of the persons operating the homes, designate homes licensed under ss. 48.48 and 48.75 as places for the temporary care and housing of such children. If the parent, guardian or legal custodian refuses to consent, the person taking the child into custody or the intake worker may release the child to one of the homes designated under this section; however, a hearing shall be held under sub. (4). The child shall not be removed from the home except with the approval of the court under sub. (4). This subsection does not prohibit the parent, guardian, or legal custodian from conferring with the child or the person operating the home.

(4) (a) If the child's parent, guardian or legal custodian does not consent to the temporary care and housing of the child at the runaway home as provided under sub. (2) or (3), a hearing shall be held on the issue by the judge or a circuit court commissioner within 24 hours of the time that the child entered the runaway home, excluding Saturdays, Sundays and legal holidays. The intake worker shall notify the child and the child's parent, guardian or legal custodian of the time, place and purpose of the hearing.

(b) If, in addition to jurisdiction under par. (c), the court has jurisdiction over the child under ss. 48.13 to 48.14, excluding s. 48.14 (8), or under ss. 938.12 to 938.14, a hearing may be held under s. 48.21 or 938.21.

(c) For the purposes of this section, the court has jurisdiction over a runaway child only to the extent that it may hold the hearings and make the orders provided in this section.

(d) At the hearing, the child, the child's parent, guardian or legal custodian and a representative of the runaway home may present evidence, cross-examine and confront witnesses and be represented by counsel or guardian ad litem.

(e) At the conclusion of the hearing, the court may order:

1. That the child be released to his or her parent, guardian or legal custodian; or

2. That, with the consent of the child and the runaway home, the child remain in the care of the runaway home for a period of not more than 20 days. Without further proceedings, the child shall be released whenever the child indicates, either by statement or conduct, that he or she wishes to leave the home or whenever the runaway home withdraws its consent. During this time period not to exceed 20 days ordered by the court, the child's parent, guardian or legal custodian may not remove the child from the home but may confer with the child or with the person operating the home. If, at the conclusion of the time period ordered by the court the child has not left the home, and no petition concerning the child has been filed under s. 48.13, 48.133, 938.12 or 938.13, the child shall be released from the home. If a petition concerning the child has been filed under s. 48.13, 48.133, 938.12 or 938.13, the child may be held in temporary physical custody under ss. 48.20 to 48.21 or 938.20 to 938.21.

(5) No person operating an approved or licensed home in compliance with this section is subject to civil or criminal liability by virtue of false imprisonment.

**History:** 1977 c. 354; 1979 c. 300; 1985 a. 176; 1995 a. 77; 1997 a. 292; 2001 a. 61.

**48.23 Right to counsel. (1g) DEFINITION.** In this section, "counsel" means an attorney acting as adversary counsel who shall advance and protect the legal rights of the party represented, and who may not act as guardian ad litem or court-appointed special advocate for any party in the same proceeding.

**(1m) RIGHT OF CHILDREN TO LEGAL REPRESENTATION.** Children subject to proceedings under this chapter shall be afforded legal representation as follows:

(a) Any child held in a secure detention facility shall be represented by counsel at all stages of the proceedings, but a child 15 years of age or older may waive counsel if the court is satisfied that the waiver is knowingly and voluntarily made and the court accepts the waiver.

(b) 1. If a child is alleged to be in need of protection or services under s. 48.13, the child may be represented by counsel at the discretion of the court. Except as provided in subd. 2., a child 15 years of age or older may waive counsel if the court is satisfied such waiver is knowingly and voluntarily made and the court accepts the waiver.

1m. If an Indian child is alleged to be in need of protection or services under s. 48.13 and the case involves the removal of the Indian child from his or her home, the placement of the child in an out-of-home placement, or the termination of the parental rights to the child, the child may be represented by counsel if the court finds that such an appointment is in the best interest of the child.

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2. If the petition is contested, the court may not place the child outside his or her home unless the child is represented by counsel at the fact-finding hearing and subsequent proceedings. If the petition is not contested, the court may not place the child outside his or her home unless the child is represented by counsel at the hearing at which the placement is made. For a child under 12 years of age, the judge may appoint a guardian ad litem instead of counsel.

(c) Any child subject to the jurisdiction of the court under s. 48.14 (5) shall be represented by counsel. No waiver of counsel may be accepted by the court.

(cm) Any minor who is subject to the jurisdiction of the circuit court under s. 48.16 and who is required to appear in court shall be represented by counsel.

(2) RIGHT OF PARENTS TO COUNSEL. Whenever a child is the subject of a proceeding involving a contested adoption or the involuntary termination of parental rights, any parent under 18 years of age who appears before the court shall be represented by counsel; but no such parent may waive counsel. A minor parent petitioning for the voluntary termination of parental rights shall be represented by a guardian ad litem. If a proceeding involves a contested adoption or the involuntary termination of parental rights, any parent 18 years old or older who appears before the court shall be represented by counsel; but the parent may waive counsel provided the court is satisfied such waiver is knowingly and voluntarily made.

(2g) RIGHT OF AN INDIAN CHILD'S PARENT OR INDIAN CUSTODIAN TO COUNSEL. Whenever an Indian child is the subject of a proceeding involving his or her removal from the home, his or her placement in an out-of-home care placement, or termination of parental rights to the child, the Indian child's parent or Indian custodian, upon a determination of indigency under s. 977.07(1) of the Indian child's parent or Indian custodian, the Indian child's parent or Indian custodian shall have the right to be represented by court-appointed counsel. If the court provides court-appointed counsel under this subsection to a person not otherwise entitled to such representation under sub. (2), the court shall promptly notify the secretary of the United States department of the interior of such appointment and the secretary, upon certification of the presiding judge, shall pay reasonable fees and expenses from funds which may be appropriated pursuant to section 13 of the Indian child welfare act, 25 USC 1901 to 1963.

(2m) RIGHT OF EXPECTANT MOTHER TO COUNSEL. (a) When an unborn child is alleged to be in need of protection or services under s. 48.133, the expectant mother of the unborn child, if the expectant mother is a child, shall be represented by counsel and may not waive counsel.

(b) If a petition under s. 48.133 is contested, no expectant mother may be placed outside of her home unless the expectant

mother is represented by counsel at the fact-finding hearing and subsequent proceedings. If the petition is not contested, the expectant mother may not be placed outside of her home unless the expectant mother is represented by counsel at the hearing at which the placement is made. An adult expectant mother, however, may waive counsel if the court is satisfied that the waiver is knowingly and voluntarily made and the court may place the adult expectant mother outside of her home even though the adult expectant mother was not represented by counsel.

(c) For an expectant mother under 12 years of age, the judge may appoint a guardian ad litem instead of counsel.

(3) POWER OF THE COURT TO APPOINT COUNSEL. Except in proceedings under s. 48.13, at any time, upon request or on its own motion, the court may appoint counsel for the child or any party, unless the child or the party has or wishes to retain counsel of his or her own choosing. Except as provided in sub. (2g), the court may not appoint counsel for any party other than the child in a proceeding under s. 48.13.

(3m) GUARDIANS AD LITEM OR COUNSEL FOR ABUSED OR NEGLECTED CHILDREN. The court shall appoint counsel for any child alleged to be in need of protection or services under s. 48.13 (3), (3m), (10), (10m) and (11), except that if the child is less than 12 years of age the court may appoint a guardian ad litem instead of counsel. The guardian ad litem or counsel for the child may not act as counsel for any other party or any governmental or social agency involved in the proceeding and may not act as court-appointed special advocate for the child in the proceeding.

(4) PROVIDING COUNSEL. In any situation under this section in which a child has a right to be represented by counsel or is provided counsel at the discretion of the court and counsel is not knowingly and voluntarily waived, the court shall refer the child to the state public defender and counsel shall be appointed by the state public defender under s. 977.08 without a determination of indigency. If the referral is of a child who has filed a petition under s. 48.375 (7), the state public defender shall appoint counsel within 24 hours after that referral. Any counsel appointed in a petition filed under s. 48.375 (7) shall continue to represent the child in any appeal brought under s. 809.105 unless the child requests substitution of counsel or extenuating circumstances make it impossible for counsel to continue to represent the child. In any situation under sub. (2) or (2m) in which a parent 18 years of age or over or an adult expectant mother is entitled to representation by counsel; counsel is not knowingly and voluntarily waived; and it appears that the parent or adult expectant mother is unable to afford counsel in full, or the parent or adult expectant mother so indicates; the court shall refer the parent or adult expectant mother to the authority for indigency determinations specified

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under s. 977.07 (1). In any other situation under this section in which a person has a right to be represented by counsel or is provided counsel at the discretion of the court, competent and independent counsel shall be provided and reimbursed in any manner suitable to the court regardless of the person's ability to pay, except that the court may not order a person who files a petition under s. 813.122 or 813.125 to reimburse counsel for the child who is named as the respondent in that petition.

(5) **COUNSEL OF OWN CHOOSING.** Regardless of any provision of this section, any party is entitled to retain counsel of his or her own choosing at his or her own expense in any proceeding under this chapter.

**History:** 1977 c. 354, 355, 447, 449; 1979 c. 300, 356; 1987 a. 27; 1987 a. 383; 1989 a. 31; Sup. Ct. Order, 151 Wis. 2d xxv (1989); 1989 a. 56, 107; 1991 a. 263; 1993 a. 377, 385, 395, 451, 491; 1995 a. 27, 77; 1997 a. 292; 1999 a. 9, 149; 2001 a. 103.

**Cross-reference:** See s. 48.275 (2), concerning contribution toward legal expenses by parent or guardian.

The court erred by failing to inform the parents of their right to a jury trial and to representation by counsel. In re Termination of Parental Rights to M. A. M. 116 Wis. 2d 432, 342 N.W.2d 410 (1984).

Neither a temporary custody order nor a custodial interrogation were proceedings under sub. (1) (a) [now (1m) (a)]. State v. Woods, 117 Wis. 2d 701, 345 N.W.2d 457 (1984).

When a party to a CHIPS action is represented by both adversary counsel and a GAL, adversary counsel must be allowed to zealously represent the client's expressed wishes, even if the GAL holds an opposing view. In Interest of T.L. 151 Wis. 2d 725, 445 N.W.2d 729 (Ct. App. 1989).

The right to be represented by counsel includes the right to effective counsel. In Interest of M.D. (S), 168 Wis. 2d 996, 485 N.W.2d 52 (1992).

The prohibition in sub. (3) against appointing counsel for a party other than the child is unconstitutional. Joni B. v. State, 202 Wis. 2d 1, 549 N.W.2d 411 (1996), 95-2757.

Sub. (4) does not say in cases other than those under s. 48.375 that appointment of counsel does not continue after an appeal has been filed. Section 809.85 provides otherwise. Juneau County Department of Human Services v. James B. 2000 WI App 86, 234 Wis. 2d 406, 610 N.W.2d 144, 99-1309.

Under *Joni B.*, juvenile courts have discretionary authority to appoint counsel for parents in CHIPS cases. When a parent requests counsel or when circumstances raise a reasonable concern that the parent will not be able to provide meaningful self-representation, the court must exercise that discretion. State v. Tammy L.D. 2000 WI App 200, 238 Wis. 2d 516, 617 N.W.2d 894, 99-1962.

**48.235 Guardian ad litem.** (1) **APPOINTMENT.** (a) The court may appoint a guardian ad litem in any appropriate matter under this chapter.

(b) The court shall appoint a guardian ad litem for a minor parent petitioning for the voluntary termination of parental rights.

(c) The court shall appoint a guardian ad litem for any child who is the subject of a proceeding to terminate parental rights, whether voluntary or involuntary, for a child who is the subject of a contested adoption proceeding and for a child who is the subject of a proceeding under s. 48.977 or 48.978.

(d) The circuit court may appoint a guardian ad litem for a minor in a proceeding under s. 48.375 (7) to aid the circuit court in determining under s. 48.375 (7) (c) whether or not the minor is mature and well-informed enough to make the abortion decision on her own and whether or not the performance or inducement of the abortion is in the minor's best interests.

(e) The court shall appoint a guardian ad litem, or extend the appointment of a guardian ad litem previously appointed under par. (a), for any child alleged or found to be in need of protection or services, if the court has ordered, or if a request or recommendation has been made that the court order, the child to be placed out of his or her home under s. 48.345 or 48.357.

(f) The court shall appoint a guardian ad litem, or extend the appointment of a guardian ad litem previously appointed under par. (a), for any unborn child alleged or found to be in need of protection or services.

(2) **QUALIFICATIONS.** The guardian ad litem shall be an attorney admitted to practice in this state. No person who is an interested party in a proceeding, who appears as counsel or court-appointed special advocate in a proceeding on behalf of any party or who is a relative or representative of an interested party in a proceeding may be appointed guardian ad litem in that proceeding.

(3) **DUTIES AND RESPONSIBILITIES.** (a) The guardian ad litem shall be an advocate for the best interests of the person or unborn child for whom the appointment is made. The guardian ad litem shall function independently, in the same manner as an attorney for a party to the action, and shall consider, but shall not be bound by, the wishes of that person or the positions of others as to the best interests of that person or unborn child. If the guardian ad litem determines that the best interests of the person are substantially inconsistent with the wishes of that person, the guardian ad litem shall so inform the court and the court may appoint counsel to represent that person. The guardian ad litem has none of the rights or duties of a general guardian.

(b) In addition to any other duties and responsibilities required of a guardian ad litem, a guardian ad litem appointed for a child who is the subject of a proceeding under s. 48.13 or for an unborn child who is the subject of a proceeding under s. 48.133 shall do all of the following:

1. Unless granted leave by the court not to do so, personally, or through a trained designee, meet with the child or expectant mother of the unborn child, assess the appropriateness and safety of the environment of the child or unborn child and, if the child is old enough to communicate, interview the child and determine the child's goals and concerns regarding his or her placement.

2. Make clear and specific recommendations to the court concerning the best interest of the child or unborn child at every stage of the proceeding.

**(4) MATTERS INVOLVING CHILD IN NEED OF PROTECTION OR SERVICES.** (a) In any matter involving a child found to be in need of protection or services, the guardian ad litem may, if reappointed or if the appointment is continued under sub. (7), do any of the following:

1. Participate in permanency planning under ss. 48.38 and 48.43 (5).

2. Petition for a change in placement under s. 48.357.

3. Petition for termination of parental rights or any other matter specified under s. 48.14.

4. Petition for revision of dispositional orders under s. 48.363.

5. Petition for extension of dispositional orders under s. 48.365.

6. Petition for a temporary restraining order and injunction under s. 813.122 or 813.125.

7. Petition for relief from a judgment terminating parental rights under s. 48.46.

7g. Petition for the appointment of a guardian under s. 48.977 (2), the revision of a guardianship order under s. 48.977 (6) or the removal of a guardian under s. 48.977 (7).

7m. Bring an action or motion for the determination of the child's paternity under s. 767.45.

8. Perform any other duties consistent with this chapter.

(b) The court shall order the agency identified under s. 48.355 (2) (b) 1. as primarily responsible for the provision of services to notify the guardian ad litem, if any, regarding actions to be taken under par. (a).

**(4m) MATTERS INVOLVING UNBORN CHILD IN NEED OF PROTECTION OR SERVICES.** (a) In any matter involving an unborn child found to be in need of protection or services, the guardian ad litem may, if reappointed or if the appointment is continued under sub. (7), do any of the following:

1. Participate in permanency planning under ss. 48.38 and 48.43 (5) after the child is born.

2. Petition for a change in placement under s. 48.357.

3. Petition for termination of parental rights or any other matter specified under s. 48.14 after the child is born.

3m. Petition for a commitment of the expectant mother of the unborn child under ch. 51 as specified in s. 48.14 (5).

4. Petition for revision of dispositional orders under s. 48.363.

5. Petition for extension of dispositional orders under s. 48.365.

6. Petition for a temporary restraining order and injunction under s. 813.122 or 813.125 after the child is born.

7. Petition for relief from a judgment terminating parental rights under s. 48.46 after the child is born.

7g. Petition for the appointment of a guardian under s. 48.977 (2), the revision of a guardianship order under s. 48.977 (6) or the removal of a guardian under s. 48.977 (7) after the child is born.

7m. Bring an action or motion for the determination of the child's paternity under s. 767.45 after the child is born.

8. Perform any other duties consistent with this chapter.

(b) The court shall order the agency identified under s. 48.355 (2) (b) 1. as primarily responsible for the provision of services to notify the guardian ad litem, if any, regarding actions to be taken under par. (a).

**(5) MATTERS INVOLVING MINOR PARENT.** The guardian ad litem for a minor parent whose parental rights are the subject of a voluntary termination proceeding shall interview the minor parent, investigate the reason for the termination of parental rights, assess the voluntariness of the consent and inform the minor parent of his or her rights and of the alternatives to, and the effect of, termination of parental rights.

**(6) COMMUNICATION TO A JURY.** In jury trials under this chapter, the guardian ad litem or the court may tell the jury that the guardian ad litem represents the interests of the person or unborn child for whom the guardian ad litem was appointed.

**(7) TERMINATION AND EXTENSION OF APPOINTMENT.** The appointment of a guardian ad litem under sub. (1) terminates upon the entry of the court's final order or upon the termination of any appeal in which the guardian ad litem participates. The guardian ad litem may appeal, may participate in an appeal or may do neither. If an appeal is taken by any party and the guardian ad litem chooses not to participate in that appeal, he or she shall file with the appellate court a statement of reasons for not participating. Irrespective of the guardian ad litem's decision not to participate in an appeal, the appellate court may order the guardian ad litem to participate in the appeal. At any time, the guardian ad litem, any party or the person for whom the appointment is made may request in writing or on the record that the court extend or terminate the appointment or reappointment. The court may extend that appointment, or reappoint a guardian ad litem appointed under this section, after the entry of the final order or after the termination of the appeal, but the court shall specifically state the scope of the responsibilities of the guardian ad litem during the period of that extension or reappointment.

**(8) COMPENSATION.** (a) A guardian ad litem appointed under this chapter shall be compensated at a rate that the court determines is reasonable, except that, if the court orders a

county to pay the compensation of the guardian ad litem under par. (b) or (c) 2., the amount ordered may not exceed the compensation payable to a private attorney under s. 977.08 (4m) (b).

(b) Subject to par. (c), the court may order either or both of the parents of a child for whom a guardian ad litem is appointed under this chapter to pay all or any part of the compensation of the guardian ad litem. In addition, upon motion by the guardian ad litem, the court may order either or both of the parents of the child to pay the fee for an expert witness used by the guardian ad litem, if the guardian ad litem shows that the use of the expert is necessary to assist the guardian ad litem in performing his or her functions or duties under this chapter. If one or both parents are indigent or if the court determines that it would be unfair to a parent to require him or her to pay, the court may order the county of venue to pay the compensation and fees, in whole or in part. If the court orders the county of venue to pay because a parent is indigent, the court may also order either or both of the parents to reimburse the county, in whole or in part, for the payment.

(c) 1. In an uncontested termination of parental rights and adoption proceeding under s. 48.833, the court shall order the agency that placed the child for adoption to pay the compensation of the child's guardian ad litem.

2. In an uncontested termination of parental rights and adoption proceeding under s. 48.835 or 48.837, the court shall order the proposed adoptive parents to pay the compensation of the child's guardian ad litem. If the proposed adoptive parents are indigent, the court may order the county of venue to pay the compensation, in whole or in part, and may order the proposed adoptive parents to reimburse the county, in whole or in part, for the payment.

(d) At any time before the final order in a proceeding in which a guardian ad litem is appointed for a child under this chapter, the court may order a parent, agency or proposed adoptive parent to place payments in an escrow account in an amount estimated to be sufficient to pay any compensation and fees payable under par. (b) or (c).

(e) If the court orders a parent or proposed adoptive parent to reimburse a county under par. (b) or (c) 2., the court may order a separate judgment for the amount of the reimbursement in favor of the county and against the parent or proposed adoptive parent who is responsible for the reimbursement.

(f) The court may enforce its orders under this subsection by means of its contempt powers.

**History:** Sup. Ct. Order, 151 Wis. 2d xxv (1989); 1991 a. 189, 263; 1993 a. 16, 318, 395; 1995 a. 27, 275; 1997 a. 237, 292, 334; 1999 a. 149.

**Judicial Council Note, 1990:** This section is designed to clarify when a guardian ad litem may or shall be appointed under this chapter, to define the duties of the guardian ad litem, and to require the adoptive parents to pay guardian ad

litem fees in independent adoptions and the agency to do so in adoptions pursuant to s. 48.837.

Sub. (1) indicates when a guardian ad litem is to be appointed, leaving broad discretion to the court for such appointments.

Sub. (1) (b) and (c) set forth situations in which a guardian ad litem is required. While there are situations in which adversary counsel are an alternative to a guardian ad litem or more desirable and therefore required under s. 48.23, the committee concluded that the best interests of the child must be reflected by a guardian ad litem in the situations enumerated in these paragraphs.

Sub. (2) continues the qualifications currently in s. 48.235.

Sub. (3) addresses the responsibilities of the guardian ad litem. The guardian ad litem is to be an advocate for the best interests of the person for whom the appointment is made. The definition specifically rejects the view that the guardian ad litem should represent the wishes of the subject when they are different from interests. The guardian ad litem is required to inform the court when the wishes of the person differ from what the guardian ad litem believes to be his or her best interests. The definition also stresses the fact that the guardian ad litem should be independent and function in the same manner as the lawyer for a party. This includes the responsibility to serve appropriate documents, to advocate in accordance with the rules of evidence, to avoid ex parte communication, and the like.

Sub. (4) is designed to suggest the possible duties of a guardian ad litem after a CHIPS order. Continuation of the guardian ad litem is discretionary with the court in such situations, as provided in sub. (7). Sub. (4) specifically permits the continued involvement of the guardian ad litem in permanency planning and in the monitoring of the placement. It also makes it clear that, if it is in the best interests of the child, the guardian ad litem may seek the termination of the parental rights of the parents of the child and prosecute such an action. It is not intended to limit the responsibilities to those noted. The court may require the department to give appropriate notice to the guardian ad litem so the duties can be fulfilled.

Sub. (5) clarifies the responsibilities of the guardian ad litem for minor parents in termination cases, in the way of investigation and communication.

Sub. (6) permits the guardian ad litem or court to explain to the jury that he or she represents the interests of the person. This is to avoid unnecessary confusion.

Sub. (7) provides for the termination of appointment of the guardian ad litem upon entry of the court's final order unless the court extends or reappoints, indicating the scope of continuing responsibility. There are a large number of things a guardian ad litem might do during the period of extension or reappointment, including participate in permanency planning, seek extension or revision of dispositional orders, seek a change in placement and the like. The court might well identify general concerns to which the guardian ad litem should continue to be attentive, leaving to the guardian ad litem the methods to carry out the delegation of responsibility. This subsection also provides for the involvement of the guardian ad litem in appeals, leaving to the guardian ad litem broad discretion as to whether and how to participate. The requirement that the guardian ad litem notify the appellate court if the guardian ad litem chooses not to participate is to ensure that the guardian ad litem reflects on this important decision. The appellate court may require participation, notwithstanding the guardian ad litem's decision.

Sub. (8) retains the current law that, unless the court otherwise orders, the county pays the fees of the guardian ad litem in matters under this chapter, but it creates an exception for uncontested termination proceedings and uncontested adoptions, in which cases the adoptive parents or the agency are required to pay this fee unless the court finds they are unable to do so. The court is given the authority to require advance payment of the guardian ad litem fees into an escrow account. [Re Order effective Jan. 1, 1990]

When a party to a CHIPS action is represented by both adversary counsel and a GAL, adversary counsel must be allowed to zealously represent the client's expressed wishes, even if the GAL holds an opposing view. In Interest of T.L. 151 Wis. 2d 725, 445 N.W.2d 729 (Ct. App. 1989).

A court's power to appropriate compensation for court-appointed counsel is necessary for the effective operation of the judicial system. In ordering compensation for attorneys, a court should abide by the s. 977.08 (4m) rate when

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it can retain qualified and effective counsel at that rate, but should order compensation at the rate under SCR 81.01 or 81.02, or a higher rate when necessary, to secure effective counsel. *Friedrich v. Dane County Circuit Ct.* 192 Wis. 2d 1, 531 N.W.2d 32 (1995).

Except as provided in sub. (8), a guardian ad litem appointed under ch. 48 is to be paid by the county, regardless of the type of action or the parent's ability to pay. *Michael T. v. Briggs*, 204 Wis. 2d 401, 555 N.W.2d 651 (Ct. App. 1996), 96-1297.

**48.236 Court-appointed special advocate.** (1) **DESIGNATION.** In any proceeding under s. 48.13 in which the court finds that providing the services of a court-appointed special advocate would be in the best interests of the child, the court may request a court-appointed special advocate program to designate a person who meets the qualifications specified in sub. (2) as a court-appointed special advocate to undertake the activities specified in sub. (3). A court-appointed special advocate does not become a party to the proceeding and, as a nonparty, may not make motions or call or cross-examine witnesses. A designation under this subsection terminates when the jurisdiction of the court over the child under s. 48.13 terminates, unless the court discharges the court-appointed special advocate sooner.

(2) **QUALIFICATIONS.** A court-appointed special advocate shall be a volunteer or employee of a court-appointed special advocate program who has been selected and trained as provided in the memorandum of understanding entered into under s. 48.07 (5) (a). No person who is a party in a proceeding, who appears as counsel or guardian ad litem in a proceeding on behalf of any party or who is a relative or representative of a party in a proceeding may be designated as a court-appointed special advocate in that proceeding.

(3) **ACTIVITIES.** A court-appointed special advocate may be designated under sub. (1) to perform any of the following activities:

(a) Gather information and make observations about the child for whom the designation is made, the child's family and any other person residing in the same home as the child and provide that information and those observations to the court in the form of written reports or, if requested by the court, oral testimony.

(b) Maintain regular contact with the child for whom the designation is made; monitor the appropriateness and safety of the environment of the child, the extent to which the child and the child's family are complying with any consent decree or dispositional order of the court and with any permanency plan under s. 48.38, and the extent to which any agency that is required to provide services for the child and the child's family under a consent decree, dispositional order or permanency plan is providing those services; and, based on that regular contact and monitoring, provide information to the court in the form of written reports or, if requested by the court, oral testimony.

(c) Promote the best interests of the child.

(d) Undertake any other activities that are consistent with the memorandum of understanding entered into under s. 48.07 (5) (a).

(4) **AUTHORITY.** A court that requests a court-appointed special advocate program to designate a court-appointed special advocate to undertake the activities specified in sub. (3) may include in the order requesting that designation an order authorizing the court-appointed special advocate to do any of the following:

(a) Inspect any reports and records relating to the child who is the subject of the proceeding, the child's family and any other person residing in the same home as the child that are relevant to the subject matter of the proceeding, including records discoverable under s. 48.293, examination reports under s. 48.295 (2), law enforcement reports and records under ss. 48.396 (1) and 938.396 (1), court records under ss. 48.396 (2) (a) and 938.396 (2) (a), social welfare agency records under ss. 48.78 (2) (a) and 938.78 (2) (a), abuse and neglect reports and records under s. 48.981 (7) (a) 11r. and pupil records under s. 118.125 (2) (L). The order shall also require the custodian of any report or record specified in this paragraph to permit the court-appointed special advocate to inspect the report or record on presentation by the court-appointed special advocate of a copy of the order. A court-appointed special advocate that obtains access to a report or record described in this paragraph shall keep the information contained in the report or record confidential and may disclose that information only to the court. If a court-appointed special advocate discloses any information to the court under this paragraph, the court-appointed special advocate shall also disclose that information to all parties to the proceeding. If a court-appointed special advocate discloses information in violation of the confidentiality requirement specified in this paragraph, the court-appointed special advocate is liable to any person damaged as a result of that disclosure for such damages as may be proved and, notwithstanding s. 814.04 (1), for such costs and reasonable actual attorney fees as may be incurred by the person damaged.

(b) Observe the child who is the subject of the proceeding and the child's living environment and, if the child is old enough to communicate, interview the child; interview the parent, guardian, legal custodian or other caregiver of the child who is the subject of the proceeding and observe that person's living environment; and interview any other person who might possess any information relating to the child and the child's family that is relevant to the subject of the proceeding. A court-appointed special advocate may observe or interview the child at any location without the permission of the child's parent, guardian, legal custodian or other caregiver if necessary to obtain any information that is relevant to the subject of the

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proceeding, except that a court-appointed special advocate may enter a child's home only with the permission of the child's parent, guardian, legal custodian or other caregiver or after obtaining a court order permitting the court-appointed special advocate to do so. A court-appointed special advocate who obtains any information under this paragraph shall keep the information confidential and may disclose that information only to the court. If a court-appointed special advocate discloses any information to the court under this paragraph, the court-appointed special advocate shall also disclose that information to all parties to the proceeding. If a court-appointed special advocate discloses information in violation of the confidentiality requirement specified in this paragraph, the court-appointed special advocate is liable to any person damaged as a result of that disclosure for such damages as may be proved and, notwithstanding s. 814.04 (1), for such costs and reasonable actual attorney fees as may be incurred by the person damaged.

(c) Exercise any other authority that is consistent with the memorandum of understanding entered into under s. 48.07 (5) (a).

**(5) IMMUNITY FROM LIABILITY.** A volunteer court-appointed special advocate designated under sub. (1) or an employee of a court-appointed special advocate program recognized under s. 48.07 (5) is immune from civil liability for any act or omission of the volunteer or employee occurring while acting within the scope of his or her activities and authority as a volunteer court-appointed special advocate or employee of a court-appointed special advocate program.

**History:** 1999 a. 149.

## SUBCHAPTER V

### PROCEDURE

**48.24 Receipt of jurisdictional information; intake inquiry.** (1) Information indicating that a child or an unborn child should be referred to the court as in need of protection or services shall be referred to the intake worker, who shall conduct an intake inquiry on behalf of the court to determine whether the available facts establish prima facie jurisdiction and to determine the best interests of the child or unborn child and of the public with regard to any action to be taken.

**(1m)** As part of the intake inquiry, the intake worker shall inform the child and the child's parent, guardian and legal custodian that they, or the adult expectant mother of an unborn child that she, may request counseling from a person designated by the court to provide dispositional services under s. 48.069.

**(2) (a)** As part of the intake inquiry the intake worker may conduct multidisciplinary screens and intake conferences with

notice to the child, parent, guardian and legal custodian or to the adult expectant mother of the unborn child. If sub. (2m) applies, the intake worker shall conduct a multidisciplinary screen under s. 48.547 if the child or expectant mother has not refused to participate under par. (b).

**(b)** No child or other person may be compelled to appear at any conference, participate in a multidisciplinary screen, produce any papers or visit any place by an intake worker.

**(2m) (a)** In counties that have an alcohol and other drug abuse program under s. 48.547, a multidisciplinary screen shall be conducted for:

2. Any child alleged to be in need of protection and services who has at least 2 prior adjudications for a violation of s. 125.07 (4) (a) or (b), 125.085 (3) (b) or 125.09 (2) or a local ordinance that strictly conforms to any of those sections.

4. Any child 12 years of age or older who requests and consents to a multidisciplinary screen.

5. Any child who consents to a multidisciplinary screen requested by his or her parents.

6. Any expectant mother 12 years of age or over who requests and consents to a multidisciplinary screen.

**(b)** The multidisciplinary screen may be conducted by an intake worker for any reason other than those specified in the criteria under par. (a).

**(3)** If the intake worker determines as a result of the intake inquiry that the child or unborn child should be referred to the court, the intake worker shall request that the district attorney, corporation counsel or other official specified in s. 48.09 file a petition.

**(4)** If the intake worker determines as a result of the intake inquiry that the case should be subject to an informal disposition, or should be closed, the intake worker shall so proceed. If a petition has been filed, informal disposition may not occur or a case may not be closed unless the petition is withdrawn by the district attorney, corporation counsel or other official specified in s. 48.09, or is dismissed by the judge.

**(5)** The intake worker shall request that a petition be filed, enter into an informal disposition or close the case within 40 days or sooner of receipt of referral information. If the case is closed or an informal disposition is entered into, the district attorney, corporation counsel or other official under s. 48.09 shall receive written notice of such action. If a law enforcement officer has made a recommendation concerning the child, or the unborn child and the expectant mother of the unborn child, the intake worker shall forward this recommendation to the district attorney, corporation counsel or other official under s. 48.09. With respect to petitioning a child or unborn child to be in need of protection or services, information received more than 40 days before filing the petition may be included to establish a

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condition or pattern which, together with information received within the 40-day period, provides a basis for conferring jurisdiction on the court. The judge shall dismiss with prejudice any such petition which is not referred or filed within the time limits specified within this subsection.

(6) The intake worker shall perform his or her responsibilities under this section under general written policies which the judge shall promulgate under s. 48.06 (1) or (2).

**History:** 1975 c. 430; 1977 c. 354; 1979 c. 300, 331, 355, 359; 1987 a. 339; 1989 a. 31, 56; 1993 a. 98; 1995 a. 77, 275, 448; 1997 a. 292.

Under the facts of the case, sub. (5) did not mandate dismissal although referral was not made within 40 days. In re J. L. W. 143 Wis. 2d 126, 420 N.W.2d 398 (Ct. App. 1988).

Under sub. (1), "information indicating that a child should be referred to the court" is that quantum of information that would allow a reasonable intake worker to evaluate the appropriate disposition of the matter. In Interest of J.W.T. 159 Wis. 2d 754, 465 N.W.2d 520 (Ct. App. 1990).

Sub. (5), when read in conjunction with sub. (3), requires that an intake worker request the district attorney to file a petition and does not require the intake worker to make a recommendation that a petition be filed. Interest of Antonio M.C. 182 Wis. 2d 301, 513 N.W.2d 662 (Ct. App. 1994).

Under sub. (2) (b), a parent is not be required to cooperate, and a refusal to cooperate cannot be used as evidence supporting a CHIPS petition. Sheboygan County Department of Health and Human Services v. Jodell G. 2001 WI App 18, 240 Wis. 2d 516, 625 N.W.2d 307, 00-1618.

The receipt of a phone message calling a county social service agency's attention to specific abuse, combined with specific information about the abuse, which the agency labelled a referral, constituted the "receipt of referral information" under sub. (5) and triggered the 40-day period for requesting that a petition be filed. Sheboygan County Department of Health and Human Services v. Jodell G. 2001 WI App 18, 240 Wis. 2d 516, 625 N.W.2d 307, 00-1618.

**48.243 Basic rights: duty of intake worker.** (1) Before conferring with the parent, expectant mother or child during the intake inquiry, the intake worker shall personally inform parents, expectant mothers and children 12 years of age or older who are the focus of an inquiry regarding the need for protection or services that the referral may result in a petition to the court and of all of the following:

- (a) What allegations could be in the petition.
- (b) The nature and possible consequences of the proceedings.
- (c) The right to remain silent and the fact that silence of any party may be relevant.
- (d) The right to confront and cross-examine those appearing against them.
- (e) The right to counsel under s. 48.23.
- (f) The right to present and subpoena witnesses.
- (g) The right to a jury trial.
- (h) The right to have the allegations of the petition proved by clear and convincing evidence.

(3) If the child or expectant mother has not had a hearing under s. 48.21 or 48.213 and was not present at an intake conference under s. 48.24, the intake worker shall inform the

child, parent, guardian and legal custodian or Indian custodian, or expectant mother, as appropriate, of the basic rights provided under this section. The notice shall be given verbally, either in person or by telephone, and in writing. This notice shall be given so as to allow the child, parent, guardian, legal custodian or adult expectant mother sufficient time to prepare for the plea hearing. This subsection does not apply to cases of informal disposition under s. 48.245.

(4) This section does not apply if the child or expectant mother was present at a hearing under s. 48.21 or 48.213.

**History:** 1977 c. 354; 1979 c. 300; 1985 a. 311; 1987 a. 27; 1995 a. 27, 77; 1997 a. 35, 292.

A CHIPS proceeding is not a criminal proceeding within the meaning of the 5th amendment. *Miranda* warnings are not required to be given to the CHIPS petition subject, even though the individual is in custody and subject to interrogation, in order for the subject's statements to be admissible. State v. Thomas J.W. 213 Wis. 2d 264, 570 N.W.2d 586 (Ct. App. 1997), 97-0506.

**48.245 Informal disposition.** (1) The intake worker may enter into a written agreement with all parties which imposes informal disposition under this section if the intake worker has determined that neither the interests of the child or unborn child nor of the public require filing of a petition for circumstances relating to ss. 48.13 to 48.14. Informal disposition shall be available only if the facts persuade the intake worker that the jurisdiction of the court, if sought, would exist and upon consent of the child, parent, guardian and legal custodian; or upon consent of the child expectant mother, her parent, guardian and legal custodian and the unborn child, by the unborn child's guardian ad litem; or upon consent of the adult expectant mother and the unborn child, by the unborn child's guardian ad litem.

(2) (a) Informal disposition may provide for any one or more of the following:

1. That the child appear with a parent, guardian or legal custodian for counseling and advice or that the adult expectant mother appear for counseling and advice.
2. That the child and a parent, guardian and legal custodian abide by such obligations as will tend to ensure the rehabilitation, protection or care of the child or that the expectant mother abide by such obligations as will tend to ensure the protection or care of the unborn child and the rehabilitation of the expectant mother.
3. That the child or expectant mother submit to an alcohol and other drug abuse assessment that conforms to the criteria specified under s. 48.547 (4) and that is conducted by an approved treatment facility for an examination of the use of alcohol beverages, controlled substances or controlled substance analogs by the child or expectant mother and any medical, personal, family or social effects caused by its use, if the multidisciplinary screen conducted under s. 48.24 (2) shows

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that the child or expectant mother is at risk of having needs and problems related to the use of alcohol beverages, controlled substances or controlled substance analogs and its medical, personal, family or social effects.

4. That the child or expectant mother participate in an alcohol and other drug abuse outpatient treatment program or an education program relating to the abuse of alcohol beverages, controlled substances or controlled substance analogs, if an alcohol and other drug abuse assessment conducted under subd. 3. recommends outpatient treatment or education.

(b) Informal disposition may not include any form of residential placement and may not exceed 6 months, except as provided under sub. (2r).

(c) If the informal disposition provides for alcohol and other drug abuse outpatient treatment under par. (a) 4., the child and the child's parent, guardian or legal custodian, or the adult expectant mother, shall execute an informed consent form that indicates that they are, or that she is, voluntarily and knowingly entering into an informal disposition agreement for the provision of alcohol and other drug abuse outpatient treatment.

(2r) If an informal disposition is based on allegations that a child or an unborn child is in need of protection or services, the intake worker may, after giving written notice to the child and the child's parent, guardian and legal custodian and their counsel, if any, or after giving written notice to the child expectant mother, her parent, guardian and legal custodian and their counsel, if any, and the unborn child by the unborn child's guardian ad litem, or after giving written notice to the adult expectant mother, her counsel, if any, and the unborn child, by the unborn child's guardian ad litem, extend the informal disposition for up to an additional 6 months unless the child or the child's parent, guardian or legal custodian, the child expectant mother, her parent, guardian or legal custodian or the unborn child by the unborn child's guardian ad litem, or the adult expectant mother or the unborn child by the unborn child's guardian ad litem, objects to the extension. If the child or the child's parent, guardian or legal custodian, the child expectant mother, her parent, guardian or legal custodian or the unborn child by the unborn child's guardian ad litem, or the adult expectant mother or the unborn child by the unborn child's guardian ad litem, objects to the extension, the intake worker may recommend to the district attorney or corporation counsel that a petition be filed under s. 48.13 or 48.133. An extension under this subsection may be granted only once for any informal disposition. An extension under this subsection of an informal disposition relating to an unborn child who is alleged to be in need of protection or services may be granted after the child is born.

(3) The obligations imposed under an informal disposition and its effective date shall be set forth in writing. The child and a parent, guardian and legal custodian, the child expectant mother, her parent, guardian and legal custodian and the unborn child by the unborn child's guardian ad litem, or the adult expectant mother and the unborn child by the unborn child's guardian ad litem, shall receive a copy, as shall any agency providing services under the agreement.

(4) The intake worker shall inform the child and the child's parent, guardian and legal custodian, the child expectant mother, her parent, guardian and legal custodian and the unborn child by the unborn child's guardian ad litem, or the adult expectant mother and the unborn child by the unborn child's guardian ad litem, in writing of their right to terminate the informal disposition at any time or object at any time to the fact or terms of the informal disposition. If an objection arises the intake worker may alter the terms of the agreement or request the district attorney or corporation counsel to file a petition. If the informal disposition is terminated the intake worker may request the district attorney or corporation counsel to file a petition.

(5) Informal disposition shall be terminated upon the request of the child, parent, guardian or legal custodian, upon request of the child expectant mother, her parent, guardian or legal custodian or the unborn child by the unborn child's guardian ad litem, or upon the request of the adult expectant mother or the unborn child by the unborn child's guardian ad litem.

(5m) An informal disposition is terminated if the district attorney or corporation counsel files a petition within 20 days after receipt of notice of the informal disposition under s. 48.24 (5). In such case statements made to the intake worker during the intake inquiry are inadmissible.

(7) If at any time during the period of informal disposition the intake worker determines that the obligations imposed under it are not being met, the intake worker may cancel the informal disposition. Within 10 days after the cancellation of the informal disposition, the intake worker shall notify the district attorney, corporation counsel or other official under s. 48.09 of the cancellation and request that a petition be filed. The judge shall dismiss with prejudice any petition which is not filed within the time limit specified in this subsection.

(8) If the obligations imposed under the informal disposition are met, the intake worker shall so inform the child and a parent, guardian and legal custodian, the child expectant mother, her parent, guardian and legal custodian and the unborn child by the unborn child's guardian ad litem, or the adult expectant mother and the unborn child by the unborn child's guardian ad litem, in writing, and no petition may be filed on the charges that brought about the informal disposition nor may

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the charges be the sole basis for a petition under ss. 48.13 to 48.14.

(9) The intake worker shall perform his or her responsibilities under this section under general written policies which the judge shall promulgate under s. 48.06 (1) or (2).

**History:** 1977 c. 354; 1979 c. 300, 331, 359; 1985 a. 311; 1987 a. 27, 285, 339, 403; 1991 a. 213, 253, 315; 1993 a. 98; 1995 a. 24, 77, 275, 448; 1997 a. 80, 292.

**48.25 Petition; authorization to file.** (1) A petition initiating proceedings under this chapter shall be signed by a person who has knowledge of the facts alleged or is informed of them and believes them to be true. The district attorney, corporation counsel or other appropriate official specified under s. 48.09 may file the petition if the proceeding is under s. 48.13 or 48.133. The counsel or guardian ad litem for a parent, relative, guardian or child may file a petition under s. 48.13 or 48.14. The counsel or guardian ad litem for an expectant mother or the guardian ad litem for an unborn child may file a petition under s. 48.133. The district attorney, corporation counsel or other appropriate person designated by the court may initiate proceedings under s. 48.14 in a manner specified by the court.

(2) If the proceeding is brought under s. 48.13 or 48.133, the district attorney, corporation counsel or other appropriate official shall file the petition, close the case, or refer the case back to intake within 20 days after the date that the intake worker's recommendation was filed. A referral back to intake may be made only when the district attorney, corporation counsel or other appropriate official decides not to file a petition or determines that further investigation is necessary. If the case is referred back to intake upon a decision not to file a petition, the intake worker shall close the case or enter into an informal disposition within 20 days. If the case is referred back to intake for further investigation, the appropriate agency or person shall complete the investigation within 20 days. If another referral is made to the district attorney, corporation counsel or other appropriate official, it shall be considered a new referral to which the time limits of this subsection shall apply. The time limits in this subsection may only be extended by a judge upon a showing of good cause under s. 48.315. If a petition is not filed within the time limitations set forth in this subsection and the court has not granted an extension, the petition shall be accompanied by a statement of reasons for the delay. The court shall dismiss with prejudice a petition which was not timely filed unless the court finds at the plea hearing that good cause has been shown for failure to meet the time limitations.

(3) If the district attorney, corporation counsel or other appropriate official specified in s. 48.09 refuses to file a petition, any person may request the judge to order that the petition be filed and a hearing shall be held on the request. The

judge may order the filing of the petition on his or her own motion. The matter may not be heard by the judge who orders the filing of a petition.

(6) If a proceeding is brought under s. 48.13, any party to or any governmental or social agency involved in the proceeding may petition the court to issue a temporary restraining order and injunction as provided in s. 813.122 or 813.125. The court exercising jurisdiction under this chapter shall follow the procedure under s. 813.122 or 813.125 except that the court may combine hearings authorized under s. 813.122 or 813.125 and this chapter, the petitioner for the temporary restraining order and injunction is not subject to the limitations under s. 813.122 (2) or 813.125 (2) and no fee is required regarding the filing of the petition under s. 813.122 or 813.125.

**History:** 1977 c. 354; 447; 1979 c. 300, 331, 355, 359; 1985 a. 234, 1993 a. 318; 1995 a. 77; 1997 a. 292.

"Good cause" under sub. (2) is determined by first considering the best interests of the child. Additional factors are whether: 1) the party seeking the enlargement of time has acted in good faith; 2) the opposing party is not prejudiced; and 3) the dilatory party took prompt action to remedy the situation. In Interest of F. E. W. 143 Wis. 2d 856, 422 N.W.2d 893 (Ct. App. 1988).

If the state fails to comply with the mandatory filing procedures pursuant to sub. (2), the petition must be dismissed with prejudice. In Interest of C.A.K. 154 Wis. 2d 612, 453 N.W.2d 897 (1990).

In a case referred by the district attorney of one county to another county, each district attorney had 20 days under sub. (2) to act following the respective referrals by the intake workers of each county. State v. Everett, 231 Wis. 2d 616, 605 N.W.2d 633 (Ct. App. 1999), 98-3444.

**48.255 Petition; form and content.** (1) A petition initiating proceedings under this chapter, other than a petition under s. 48.133, shall be entitled, "In the interest of (child's name), a person under the age of 18" and shall set forth with specificity:

(a) The name, birth date and address of the child.

(b) The names and addresses of the child's parent, guardian, legal custodian or spouse, if any; or if no such person can be identified, the name and address of the nearest relative.

(c) Whether the child is in custody, and, if so, the place where the child is being held and the time he or she was taken into custody unless there is reasonable cause to believe that such disclosure would result in imminent danger to the child or physical custodian.

(cm) Whether the child may be subject to the federal Indian child welfare act, 25 USC 1911 to 1963.

(e) If the child is alleged to come within the provisions of s. 48.13 or 48.14, reliable and credible information which forms the basis of the allegations necessary to invoke the jurisdiction of the court and to provide reasonable notice of the conduct or circumstances to be considered by the court together with a statement that the child is in need of supervision, services, care or rehabilitation.

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(f) ~~If the child is being held in custody outside of his or her home, reliable and credible information showing that continued placement of the child in his or her home would be contrary to the welfare of the child and, unless any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies, reliable and credible information showing that the person who took the child into custody and the intake worker have made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns, and to make it possible for the child to return safely home.~~

2. If the child is an Indian child and is being held in custody outside of his or her home, reliable and credible information showing that continued placement of the child in his or her home would be contrary to the welfare of the child and that continued placement is necessary to prevent immediate physical damage or harm to the child and, unless any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies, reliable and credible information showing that the person who took the child into custody and the intake worker have made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns, and to make it possible for the child to return safely home. (1m) A petition initiating proceedings under s. 48.133 shall be entitled "In the interest of (J. Doe), an unborn child, and (expectant mother's name), the unborn child's expectant mother" and shall set forth with specificity:

- (a) The estimated gestational age of the unborn child.
- (b) The name, birth date and address of the expectant mother.
- (bm) The names and addresses of the parent, guardian, legal custodian or spouse, if any, of the expectant mother, if the expectant mother is a child, the name and address of the spouse, if any, of the expectant mother, if the expectant mother is an adult, or, if no such person can be identified, the name and address of the nearest relative of the expectant mother.
- (c) Whether the expectant mother is in custody and, if so, the place where the expectant mother is being held and the time when the expectant mother was taken into custody unless there is reasonable cause to believe that disclosure of that information would result in imminent danger to the unborn child, expectant mother or physical custodian.

(d) Whether the unborn child, when born, may be subject to the federal Indian Child Welfare Act, 25 USC 1911 to 1963, and, if the child may be subject to that Act, the name of the tribe of which the child is a member or in which the child may be eligible for membership, if known.

(e) Reliable and credible information which forms the basis of the allegations necessary to invoke the jurisdiction of the

court under s. 48.133 and to provide reasonable notice of the conduct or circumstances to be considered by the court, together with a statement that the unborn child is in need of protection or care and that the expectant mother is in need of supervision, services, care or rehabilitation.

(f) If the expectant mother is a child and the child expectant mother is being held in custody outside of her home, reliable and credible information showing that continued placement of the child expectant mother in her home would be contrary to the welfare of the child expectant mother and, unless any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies, reliable and credible information showing that the person who took the child expectant mother into custody and the intake worker have made reasonable efforts to prevent the removal of the child expectant mother from the home, while assuring that the child expectant mother's health and safety are the paramount concerns, and to make it possible for the child expectant mother to return safely home.

(2) If any of the facts required under sub. (1) (a) to (cm) and (f) or (1m) (a) to (d) and (f) are not known or cannot be ascertained by the petitioner, the petition shall so state.

(3) If the information required under sub. (1) (e) or (1m) (e) is not stated, the petition shall be dismissed or amended under s. 48.263 (2).

(4) A copy of a petition under sub. (1) shall be given to the child if the child is 12 years of age or over and to the parents, guardian, legal custodian and physical custodian. A copy of a petition under sub. (1m) shall be given to the child expectant mother, if 12 years of age or over, her parents, guardian, legal custodian and physical custodian and the unborn child by the unborn child's guardian ad litem or to the adult expectant mother, the unborn child through the unborn child's guardian ad litem and the physical custodian of the expectant mother, if any. A copy of a petition under sub. (1) or (1m) shall also be given to the tribe ~~of the an Indian child or the tribe with which the unborn Indian child may be eligible for membership when born.~~

(5) Subsections (1) to (4) do not apply to petitions to initiate a proceeding under s. 48.375 (7).

**History:** 1977 c. 354; 1991 a. 263; 1995 a. 27, 77, 352; 1997 a. 292; 2001 a. 109.

A CHIPS petition that alleged that a child was the victim of sexual abuse, but contained no information giving rise to an inference that there was something the court could do for the child that was not already being provided, was insufficient. Interest of Courtney E. 184 Wis. 2d 592, 516 N.W.2d 422 (1994).

**48.257 Petition to initiate a procedure to waive parental consent prior to a minor's abortion.** (1) A petition to initiate a proceeding under s. 48.375 (7) shall be entitled, "In the interest of 'Jane Doe', a person under the age of 18", and shall set forth with specificity:

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48.415

## CHILDREN'S CODE

UNOFFICIAL TEXT

- (a) The name "Jane Doe" and the minor's date of birth.
- (b) A statement that the minor is pregnant and the estimated gestational age of the fetus at the time that the petition is filed, and a statement that the minor is seeking an abortion.
- (c) The name and address of the person who intends to perform or induce the abortion, if known. If that person is not known, the name and address of the clinic or other medical facility that intends to perform or induce the abortion, if known.
- (d) A request for waiver of the parental consent requirement under s. 48.375 (4).
- (e) A statement alleging that the minor is mature and well-informed enough to make her own decision on whether or not to have an abortion and facts sufficient to establish that the minor is mature enough and well-informed enough to make her own decision.
- (f) A statement alleging that, if the circuit court does not find that the minor is mature enough and well-informed enough to make her own decision, the circuit court should find that having an abortion is in the minor's best interest and facts sufficient to establish that an abortion is in the minor's best interest.
- (g) A statement acknowledging that the minor has been fully informed of the risks and consequences of abortion and the risks and consequences of carrying the pregnancy to term.
- (h) If the minor is not represented by counsel, the place where and the manner in which the minor wishes to be notified of proceedings under s. 48.375 (7) until appointment of counsel under s. 48.375 (7) (a) 1. If the petition is filed by a member of the clergy on behalf of the minor, the place where and manner in which the member of the clergy wishes to be notified of proceedings under s. 48.375 (7).
- (2) The director of state courts shall provide simplified forms for use in filing a petition under this section to the clerk of circuit court in each county.
- (3) The minor who is seeking the abortion shall sign the name "Jane Doe" on the petition to initiate a proceeding under s. 48.375 (7). No other person may be required to sign the petition.
- (4) The clerk of circuit court shall give a copy of the petition to the minor or to the member of the clergy who files a petition on behalf of the minor, if any.
- (5) The minor, or the intake worker under s. 48.067 (7m), shall file the completed petition under this section with the clerk of circuit court.
- (6) No filing fee may be charged for a petition under this section.

History: 1991 a. 263, 315.

**48.263 Amendment of petition.** (1) Except as provided in s. 48.255 (3), no petition, process or other proceeding may be dismissed or reversed for any error or mistake if the case and the identity of the child or expectant mother named in the petition may be readily understood by the court; and the court may order an amendment curing the defects.

(2) With reasonable notification to the interested parties and prior to the taking of a plea under s. 48.30, the petition may be amended at the discretion of the court or person who filed the petition. After the taking of a plea, the petition may be amended provided any objecting party is allowed a continuance for a reasonable time.

History: 1977 c. 354; 1979 c. 300; 1995 a. 77; 1997 a. 292.

**48.27 Notice; summons.** (1) (a) After a petition has been filed relating to facts concerning a situation specified under s. 48.13 or a situation specified in s. 48.133 involving an expectant mother who is a child, unless the parties under sub. (3) voluntarily appear, the court may issue a summons requiring the person who has legal custody of the child to appear personally, and, if the court so orders, to bring the child before the court at a time and place stated.

(b) After a petition has been filed relating to facts concerning a situation specified under s. 48.133 involving an expectant mother who is an adult, unless the adult expectant mother voluntarily appears, the court may issue a summons requiring the adult expectant mother to appear personally before the court at a time and place stated.

(2) Summons may be issued requiring the appearance of any other person whose presence, in the opinion of the court, is necessary.

(3) (a) 1. If the petition that was filed relates to facts concerning a situation under s. 48.13 or a situation under s. 48.133 involving an expectant mother who is a child, the court shall also notify, under s. 48.273, the child, any parent, guardian and legal custodian or Indian custodian of the child, the child's tribe if the child is an Indian child, any foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) of the child, the unborn child by the unborn child's guardian ad litem, if applicable, and any person specified in par. (b), (d) or (e), if applicable, of all hearings involving the child except hearings on motions for which notice need only be provided to the child and his or her counsel. When parents who are entitled to notice have the same place of residence, notice to one shall constitute notice to the other. The first notice to any interested party, foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) shall be written and may have a copy of the petition attached to it. Thereafter, notice of hearings may be given by telephone at least 72 hours before the time of the hearing. The person giving telephone notice shall

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place in the case file a signed statement of the time notice was given and the person to whom he or she spoke.

1m. The court shall give a foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) who is notified of a hearing under subd. 1. an opportunity to be heard at the hearing by permitting the foster parent, treatment foster parent or other physical custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issues to be determined at the hearing. A foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) who receives a notice of a hearing under subd. 1. and an opportunity to be heard under this subdivision does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and opportunity to be heard.

2. Failure to give notice under subd. 1. to a foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) does not deprive the court of jurisdiction in the action or proceeding. If a foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) is not given notice of a hearing under subd. 1., that person may request a rehearing on the matter during the pendency of an order resulting from the hearing. If the request is made, the court shall order a rehearing.

(b) 1. Except as provided in subd. 2., if the petition that was filed relates to facts concerning a situation under s. 48.13 or a situation under s. 48.133 involving an expectant mother who is a child and if the child is a nonmarital child who is not adopted or whose parents do not subsequently intermarry as provided under s. 767.60 and if paternity has not been established, the court shall notify, under s. 48.273, all of the following persons:

a. A person who has filed a declaration of interest under s. 48.025.

b. A person alleged to the court to be the father of the child or who may, based on the statements of the mother or other information presented to the court, be the father of the child.

2. A court is not required to provide notice, under subd. 1., to any person who may be the father of a child conceived as a result of a sexual assault if a physician attests to his or her belief that there was a sexual assault of the child's mother that may have resulted in the child's conception.

(c) If the petition that was filed relates to facts concerning a situation under s. 48.133 involving an expectant mother who is an adult, the court shall notify, under s. 48.273, the unborn child by the unborn child's guardian ad litem, the expectant mother, the physical custodian of the expectant mother, if any, and any person specified in par. (d), if applicable, of all hearings involving the unborn child and expectant mother except hearings on motions for which notice need only be provided to

the expectant mother and her counsel and the unborn child through the unborn child's guardian ad litem. The first notice to any interested party shall be written and may have a copy of the petition attached to it. Thereafter, notice of hearings may be given by telephone at least 72 hours before the time of the hearing. The person giving telephone notice shall place in the case file a signed statement of the time notice was given and the person to whom he or she spoke.

(d) If the petition that was filed relates to facts concerning a situation under s. 48.133 concerning an unborn child who, when born, will be an Indian child, the court shall notify, under s. 48.273, the tribe or band with which the unborn child will be affiliated when born and that tribe or band may, at the court's discretion, intervene in the proceeding before the unborn child is born.

(e) If the petition that was filed relates to facts concerning a situation under s. 48.13, the court shall also notify, under s. 48.273, the court-appointed special advocate for the child of all hearings involving the child. The first notice to a court-appointed special advocate shall be written and shall have a copy of the petition attached to it. Thereafter, notice of hearings may be given by telephone at least 72 hours before the time of the hearing. The person giving telephone notice shall place in the case file a signed statement of the time that notice was given and the person to whom he or she spoke.

(4) (a) A notice under sub. (3) (a) or (b) shall:

1. Contain the name of the child, and the nature, location, date and time of the hearing.

2. Advise the child and, if the child is an Indian child, the Indian child's parent or Indian custodian of his or her right to legal counsel regardless of ability to pay.

(b) A notice under sub. (3) (c) shall:

1. Contain the name of the adult expectant mother, and the nature, location, date and time of the hearing.

2. Advise the adult expectant mother of her right to legal counsel regardless of ability to pay.

(5) Subject to sub. (3) (b), the court shall make every reasonable effort to identify and notify any person who has filed a declaration of interest under s. 48.025 and any person who has been adjudged to be the biological father of the child in a judicial proceeding unless the biological father's rights have been terminated.

(6) When a proceeding is initiated under s. 48.14, all interested parties shall receive notice and appropriate summons shall be issued in a manner specified by the court, consistent with applicable governing statutes. In addition, if the child who is the subject of the proceeding is in the care of a foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2), the court shall give the foster parent, treatment

foster parent or other physical custodian notice and an opportunity to be heard as provided in sub. (3)(a).

(8) When a petition is filed under s. 48.13 or when a petition involving an expectant mother who is a child is filed under s. 48.133, the court shall notify, in writing, the child's parents or guardian that they may be ordered to reimburse this state or the county for the costs of legal counsel provided for the child, as provided under s. 48.275 (2).

(9) Subsections (1) to (8) do not apply in any proceeding under s. 48.375 (7). For proceedings under s. 48.375 (7), the circuit court shall provide notice only to the minor, her counsel, if any, the member of the clergy who filed the petition on behalf of the minor, if any, and her guardian ad litem, if any. The notice shall contain the title and case number of the proceeding, and the nature, location, date and time of the hearing or other proceeding. Notice to the minor or to the member of the clergy, if any, shall be provided as requested under s. 48.257 (1) (h) and, after appointment of the minor's counsel, if any, by her counsel.

**History:** 1977 c. 354; 1979 c. 300, 331, 359; 1983 a. 27; Sup. Ct. Order, 141 Wis. 2d xiv (1987); 1987 a. 403; 1991 a. 263, 315; 1993 a. 98, 395; 1995 a. 27, 77, 275; 1997 a. 237, 292; 1999 a. 32, 149.

**48.273 Service of summons or notice; expense.** (1) Service of summons or notice required by s. 48.27 may be made by mailing a copy thereof to the persons summoned or notified. If the persons fail to appear at the hearing or otherwise to acknowledge service, a continuance shall be granted, except where the court determines otherwise because the child is in secure custody, and service shall be made personally by delivering to the persons a copy of the summons or notice; except that if the court is satisfied that it is impracticable to serve the summons or notice personally, it may make an order providing for the service of the summons or notice by certified mail addressed to the last-known addresses of the persons. The court may refuse to grant a continuance when the child is being held in secure custody, but in such a case the court shall order that service of notice of the next hearing be made personally or by certified mail to the last-known address of the person who failed to appear at the hearing. Personal service shall be made at least 72 hours before the time of the hearing. Mail shall be sent at least 7 days before the time of the hearing, except where the petition is filed under s. 48.13 and the person to be notified lives outside the state, in which case the mail shall be sent at least 14 days before the time of the hearing.

(2) Service of summons or notice required by this chapter may be made by any suitable person under the direction of the court.

(3) The expenses of service of summons or notice or of the publication of summons or notice and the traveling expenses and fees as allowed in ch. 885 incurred by any person

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summoned or required to appear at the hearing of any case coming within the jurisdiction of the court under ss. 48.13 to 48.14, shall be a charge on the county when approved by the court.

(4) (a) Subsections (1) and (3) do not apply to any proceeding under s. 48.375 (7).

(b) Personal service is required for notice of all proceedings under s. 48.375 (7), except that, if the minor is not represented by counsel, notice to the minor shall be in the manner and at the place designated in the petition under s. 48.257 (1) until appointment of the minor's counsel, if any, under s. 48.375 (7) (a) 1. Notice shall be served immediately for any proceeding under s. 48.375 (7) unless the minor waives the immediate notice. If the minor waives the immediate notice, the notice shall be served at least 24 hours before the time of the hearing under s. 48.375 (7) (b) or any other proceeding under s. 48.375 (7). A minor may, in acknowledging receipt of service of the notice, sign the name "Jane Doe" in lieu of providing the minor's full signature.

(c) The expenses of service of notice and the travel expenses and fees allowed in ch. 885 incurred by any person who is required to appear, other than the minor who is named in the petition, in any proceeding under s. 48.375 (7) shall be paid by the county in which the circuit court that holds the proceeding is located.

**History:** 1977 c. 354; 1979 c. 300; 1991 a. 263; 1993 a. 98; 1995 a. 77.  
Service under this section is applicable to members of an Indian tribe. In Interest of M.L.S. 157 Wis. 2d 26, 458 N.W.2d 541 (Ct. App. 1990).

**48.275 Parents' contribution to cost of court and legal services.** (1) If the court finds a child to be in need of protection or services under s. 48.13 or an unborn child of an expectant mother who is a child to be in need of protection or services under s. 48.133, the court shall order the parent of the child to contribute toward the expense of post-adjudication services to the child expectant mother and the child when born the proportion of the total amount which the court finds the parent is able to pay. If the court finds an unborn child of an expectant mother who is an adult to be in need of protection or services under s. 48.133, the court shall order the adult expectant mother to contribute toward the expense of post-adjudication services to the adult expectant mother and the child when born the proportion of the total amount which the court finds the adult expectant mother is able to pay.

(2) (a) If this state or a county provides legal counsel to a child who is subject to a proceeding under s. 48.13 or to a child expectant mother who is subject to a proceeding under s. 48.133, the court shall order the child's parent to reimburse the state or county in accordance with par. (b) or (c). If this state or a county provides legal counsel to an adult expectant mother who is subject to a proceeding under s. 48.133, the court shall

order the adult expectant mother to reimburse the state or county in accordance with par. (b) or (c). The court may not order reimbursement if a parent is the complaining or petitioning party or if the court finds that the interests of the parent and the interests of the child in the proceeding are substantially and directly adverse and that reimbursement would be unfair to the parent. The court may not order reimbursement until the completion of the proceeding or until the state or county is no longer providing the child or expectant mother with legal counsel in the proceeding.

(b) If this state provides the child or adult expectant mother with legal counsel and the court orders reimbursement under par. (a), the child's parent or the adult expectant mother may request the state public defender to determine whether the parent or adult expectant mother is indigent as provided under s. 977.07 and to determine the amount of reimbursement. If the parent or adult expectant mother is found not to be indigent, the amount of reimbursement shall be the maximum amount established by the public defender board. If the parent or adult expectant mother is found to be indigent in part, the amount of reimbursement shall be the amount of partial payment determined in accordance with the rules of the public defender board under s. 977.02 (3).

(c) If the county provides the child or adult expectant mother with legal counsel and the court orders reimbursement under par. (a), the court shall either make a determination of indigency or shall appoint the county department to make the determination. If the court or the county department finds that the parent or adult expectant mother is not indigent or is indigent in part, the court shall establish the amount of reimbursement and shall order the parent or adult expectant mother to pay it.

(cg) The court shall, upon motion by a parent or expectant mother, hold a hearing to review any of the following:

1. An indigency determination made under par. (b) or (c).
2. The amount of reimbursement ordered.
3. The court's finding, under par. (a), that the interests of the parent and the child are not substantially and directly adverse and that ordering the payment of reimbursement would not be unfair to the parent.

(cr) Following a hearing under par. (cg), the court may affirm, rescind or modify the reimbursement order.

(d) 1. In a county having a population of less than 500,000, reimbursement payments shall be made to the clerk of courts of the county where the proceedings took place. Each payment shall be transmitted to the county treasurer, who shall deposit 25% of the amount paid for state-provided counsel in the county treasury and transmit the remainder to the secretary of administration. Payments transmitted to the secretary of

administration shall be deposited in the general fund and credited to the appropriation account under s. 20.550 (1) (L). The county treasurer shall deposit 100% of the amount paid for county-provided counsel in the county treasury.

2. In a county having a population of 500,000 or more, reimbursement payments shall be made to the clerk of courts of the county where the proceedings took place. Each payment shall be transmitted to the secretary of administration, who shall deposit the amount paid in the general fund and credit 25% of the amount paid to the appropriation account under s. 20.435 (3) (gx) and the remainder to the appropriation account under s. 20.550 (1) (L).

(dm) Within 30 days after each calendar quarter, the clerk of court for each county shall report to the state public defender all of the following:

1. The total amount of reimbursement determined or ordered under par. (b) or (cr) for state-provided counsel during the previous calendar quarter.

2. The total amount collected under par. (d) for state-provided counsel during the previous calendar quarter.

(e) A person who fails to comply with an order under par. (b) or (c) may be proceeded against for contempt of court under ch. 785.

(3) This section does not apply to any proceedings under s. 48.375 (7).

**History:** 1977 c. 29, 354, 449; 1981 c. 20; 1983 a. 27; 1985 a. 29, 176; 1987 a. 27; 1991 a. 263; 1993 a. 98, 446; 1995 a. 27, 77; 1997 a. 27, 292; 2003 a. 33.

Guardian ad litem fees are not reimbursable under sub. (2) (a). In Interest of G. & L.P. 119 Wis. 2d 349, 349 N.W.2d 743 (Ct. App. 1984).

**48.28 Failure to obey summons; capias.** If any person summoned fails without reasonable cause to appear, he or she may be proceeded against for contempt of court. In case the summons cannot be served or the parties served fail to obey the same, or in any case when it appears to the court that the service will be ineffectual a capias may be issued for the parent or guardian or for the child. Subchapter IV governs the taking and holding of a child in custody.

**History:** 1977 c. 354 s. 41; Stats. 1977 s. 48.28; 1979 c. 331, 359.

The issuance of a capias to secure the physical attendance of a juvenile prior to the service of the summons and petition on the juvenile was error but did not deny the court personal jurisdiction. Interest of Jermaine T.J. 181 Wis. 2d 82, 510 N.W.2d 735 (Ct. App. 1993).

**48.29 Substitution of judge.** (1) The child, the child's parent, guardian or legal custodian, the expectant mother or the unborn child by the unborn child's guardian ad litem, either before or during the plea hearing, may file a written request with the clerk of the court or other person acting as the clerk for a substitution of the judge assigned to the proceeding. Upon filing the written request, the filing party shall immediately mail or deliver a copy of the request to the judge named in the

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request. When any person has the right to request a substitution of judge, that person's counsel or guardian ad litem may file the request. Not more than one such written request may be filed in any one proceeding, nor may any single request name more than one judge. This section does not apply to proceedings under s. 48.21 or 48.213.

(1m) When the clerk receives a request for substitution, the clerk shall immediately contact the judge whose substitution has been requested for a determination of whether the request was made timely and in proper form. If the request is found to be timely and in proper form, the judge named in the request has no further jurisdiction and the clerk shall request the assignment of another judge under s. 751.03. If no determination is made within 7 days, the clerk shall refer the matter to the chief judge of the judicial administrative district for determination of whether the request was made timely and in proper form and reassignment as necessary.

(3) Subsections (1) and (1m) do not apply in any proceeding under s. 48.375 (7). For proceedings under s. 48.375 (7), the minor may select the judge whom she wishes to be assigned to the proceeding and that judge shall be assigned to the proceeding.

**History:** 1977 c. 354; 1979 c. 32 s. 92 (1); 1979 c. 300; 1987 a. 151; 1991 a. 263; 1993 a. 98; 1995 a. 77; 1997 a. 35, 292.

Sub. (1) permits more than one party to file a request for a substitution of judge in a TPR proceeding. *Julie A.B. v. Sheboygan County*, 2002 WI App 220, 257 Wis. 2d 285, 650 N.W.2d 920, 02-1479.

This section, not s. 801.58, is applicable to judicial substitutions in termination of parental rights cases. *Brown County Department of Human Services v. Terrance M.* 2005 WI App 57, 280 Wis. 2d 396, 694 N.W.2d 458, 04-2379.

**48.293 Discovery.** (1) Copies of all law enforcement officer reports, including the officer's memorandum and witnesses' statements, shall be made available upon request to counsel or guardian ad litem for any party and to the court-appointed special advocate for the child prior to a plea hearing. The reports shall be available through the representative of the public designated under s. 48.09. The identity of a confidential informant may be withheld pursuant to s. 905.10.

(2) All records relating to a child, or to an unborn child and the unborn child's expectant mother, which are relevant to the subject matter of a proceeding under this chapter shall be open to inspection by a guardian ad litem or counsel for any party and to inspection by the court-appointed special advocate for the child, upon demand and upon presentation of releases when necessary, at least 48 hours before the proceeding. Persons and unborn children, by their guardians ad litem, entitled to inspect the records may obtain copies of the records with the permission of the custodian of the records or with permission of the court. The court may instruct counsel, a guardian ad litem or a court-appointed special advocate not to disclose specified items in the materials to the child or the parent, or to the

expectant mother, if the court reasonably believes that the disclosure would be harmful to the interests of the child or the unborn child.

(3) Upon request prior to the fact-finding hearing, counsel for the interests of the public shall disclose to the child, through his or her counsel or guardian ad litem, or to the unborn child, through the unborn child's guardian ad litem, the existence of any audiovisual recording of an oral statement of a child under s. 908.08 which is within the possession, custody or control of the state and shall make reasonable arrangements for the requesting person to view the statement. If, after compliance with this subsection, the state obtains possession, custody or control of such a statement, counsel for the interests of the public shall promptly notify the requesting person of that fact and make reasonable arrangements for the requesting person to view the statement.

(4) In addition to the discovery procedures permitted under subs. (1) to (3), the discovery procedures permitted under ch. 804 shall apply in all proceedings under this chapter.

**History:** 1977 c. 354; 1985 a. 262; 1989 a. 121; 1993 a. 16; 1995 a. 77, 275; 1997 a. 292; 1999 a. 149; 2005 a. 42.

**Judicial Council Note, 1985:** Sub. (3) makes videotaped oral statements of children in the possession, custody or control of the state discoverable upon demand by the child, child's counsel or guardian ad litem. These statements may be admissible under s. 908.08, stats. [85 Act 262]

Prior to a waiver hearing, a juvenile does not have broad discovery rights under this section. *In Interest of T. M. J.* 110 Wis. 2d 7, 327 N.W.2d 198 (Ct. App. 1982).

This section is the exclusive source of discovery rights of parties in ch. 48 actions. That ch. 804 discovery procedures are not available in ch. 48 actions does not deny due process. *State v. Tammy F.* 196 Wis. 2d 981, 539 N.W.2d 475 (Ct. App. 1995), 95-1455.

The juvenile court must make a threshold relevancy determination by an in camera review when confronted with: 1) a discovery request under s. 48.293 (2); 2) an inspection request of juvenile records under ss. 48.396 (2) (a) and 938.396 (2) (a); or 3) an inspection request of agency records under ss. 48.78 (2) (a) and 938.78 (2) (a). The test for permissible discovery is whether the information sought appears reasonably calculated to lead to the discovery of admissible evidence. *Courtney F. v. Ramiro M.C.* 2004 WI App 36, 269 Wis. 2d 709, 676 N.W.2d 545, 03-3018.

**48.295 Physical, psychological, mental or developmental examination.** (1) After the filing of a petition and upon a finding by the court that reasonable cause exists to warrant an examination or an alcohol and other drug abuse assessment that conforms to the criteria specified under s. 48.547 (4), the court may order any child coming within its jurisdiction to be examined as an outpatient by personnel in an approved treatment facility for alcohol and other drug abuse, by a physician, psychiatrist or licensed psychologist, or by another expert appointed by the court holding at least a master's degree in social work or another related field of child development, in order that the child's physical, psychological, alcohol or other drug dependency, mental or developmental condition may be considered. The court may also order an examination or an

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alcohol and other drug abuse assessment that conforms to the criteria specified under s. 48.547 (4) of a parent, guardian or legal custodian whose ability to care for a child is at issue before the court or of an expectant mother whose ability to control her use of alcohol beverages, controlled substances or controlled substance analogs is at issue before the court. The court shall hear any objections by the child, the child's parents, guardian or legal custodian to the request for such an examination or assessment before ordering the examination or assessment. The expenses of an examination, if approved by the court, shall be paid by the county of the court ordering the examination in a county having a population of less than 500,000 or by the department in a county having a population of 500,000 or more. The payment for an alcohol and other drug abuse assessment shall be in accordance with s. 48.361.

(1c) Reasonable cause is considered to exist to warrant an alcohol and other drug abuse assessment under sub. (1) if the multidisciplinary screen procedure conducted under s. 48.24 (2) indicates that the child or expectant mother is at risk of having needs and problems related to alcohol or other drug abuse.

(1g) If the court orders an alcohol or other drug abuse assessment under sub. (1), the approved treatment facility shall, within 14 days after the court order, report the results of the assessment to the court, except that, upon request by the approved treatment facility and if the child is not an expectant mother under s. 48.133 and is not held in secure or nonsecure custody, the court may extend the period for assessment for not more than 20 additional working days. The report shall include a recommendation as to whether the child or expectant mother is in need of treatment for abuse of alcohol beverages, controlled substances or controlled substance analogs or education relating to the use of alcohol beverages, controlled substances and controlled substance analogs and, if so, shall recommend a service plan and an appropriate treatment, from an approved treatment facility, or a court-approved education program.

(2) The examiner shall file a report of the examination with the court by the date specified in the order. The court shall cause copies to be transmitted to the district attorney or corporation counsel, to counsel or guardian ad litem for the child and to the court-appointed special advocate for the child. If applicable, the court shall also cause copies to be transmitted to counsel or guardian ad litem for the unborn child and the unborn child's expectant mother. The report shall describe the nature of the examination and identify the persons interviewed, the particular records reviewed and any tests administered to the child or expectant mother. The report shall also state in reasonable detail the facts and reasoning upon which the examiner's opinions are based.

(3) If the child, the child's parent or the expectant mother objects to a particular physician, psychiatrist, licensed psychologist or other expert as required under this section, the court shall appoint a different physician, psychiatrist, psychologist or other expert as required under this section.

(4) Motions or objections under this section may be heard under s. 807.13.

**History:** 1977 c. 354; 1979 c. 300; 1985 a. 321; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 339; 1993 a. 474; 1995 a. 77, 225, 448; 1997 a. 27, 292; 1999 a. 149.

**Judicial Council Note, 1988:** Sub. (4) allows oral argument on motions or objections under this section to be heard by telephone. [Re Order effective Jan. 1, 1988]

**48.297 Motions before trial.** (1) Any motion which is capable of determination without trial of the general issue may be made before trial.

(2) Defenses and objections based on defects in the institution of proceedings, lack of probable cause on the face of the petition, insufficiency of the petition or invalidity in whole or in part of the statute on which the petition is founded shall be raised not later than 10 days after the plea hearing or be deemed waived. Other motions capable of determination without trial may be brought any time before trial.

(3) Motions to suppress evidence as having been illegally seized or statements as having been illegally obtained shall be made before fact-finding on the issues. The court may entertain the motion at the fact-finding hearing if it appears that a party is surprised by the attempt to introduce such evidence and that party waives jeopardy.

(4) Although the taking of a child or an expectant mother of an unborn child into custody is not an arrest, that taking into custody shall be considered an arrest for the purpose of deciding motions which require a decision about the propriety of taking into custody, including motions to suppress evidence as illegally seized, motions to suppress statements as illegally obtained and motions challenging the lawfulness of the taking into custody.

(5) If the child or the expectant mother of an unborn child is in custody and the court grants a motion to dismiss based on a defect in the petition or in the institution of the proceedings, the court may order the child or expectant mother to be continued in custody for not more than 48 hours pending the filing of a new petition.

(6) A motion required to be served on a child may be served on his or her attorney of record. A motion required to be served on an unborn child may be served on the unborn child's guardian ad litem.

(7) Oral argument permitted on motions under this section may be heard by telephone under s. 807.13 (1).

**History:** 1977 c. 354; 1979 c. 300, 331, 359; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1995 a. 77; 1997 a. 35, 292.

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**48.299 Procedures at hearings.** (1) (a) The general public shall be excluded from hearings under this chapter and from hearings by courts exercising jurisdiction under s. 48.16 unless a public fact-finding hearing is demanded by a child through his or her counsel, by an expectant mother through her counsel or by an unborn child through the unborn child's guardian ad litem. However, the court shall refuse to grant the public hearing in a proceeding other than a proceeding under s. 48.375 (7), if a parent, guardian, expectant mother or unborn child through the unborn child's guardian ad litem objects.

(ag) In a proceeding other than a proceeding under s. 48.375 (7), if a public hearing is not held, only the parties and their counsel or guardian ad litem, the court-appointed special advocate for the child, the child's foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2), witnesses and other persons requested by a party and approved by the court may be present, except that the court may exclude a foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) from any portion of the hearing if that portion of the hearing deals with sensitive personal information of the child or the child's family or if the court determines that excluding the foster parent, treatment foster parent or other physical custodian would be in the best interests of the child. Except in a proceeding under s. 48.375 (7), any other person the court finds to have a proper interest in the case or in the work of the court, including a member of the bar, may be admitted by the court.

(ar) All hearings under s. 48.375 (7) shall be held in chambers, unless a public fact-finding hearing is demanded by the child through her counsel. In a proceeding under s. 48.375 (7), the child's foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) may be present if requested by a party and approved by the court.

(b) Except as provided in ss. 48.375 (7) (e) and 48.396, any person who divulges any information which would identify the child, the expectant mother or the family involved in any proceeding under this chapter shall be subject to ch. 785.

(3) If the court finds that it is in the best interest of the child, and if the child's counsel or guardian ad litem consents, the child may be temporarily excluded by the court from a hearing on a petition alleging that the child is in need of protection or services. If the court finds that a child under 7 years of age is too young to comprehend the hearing, and that it is in the best interest of the child, the child may be excluded from the entire hearing.

(4) Chapters 901 to 911 shall govern the presentation of evidence at the fact-finding hearings under ss. 48.31, 48.42, 48.977 (4) (d) and 48.978 (2) (e) and (3) (f) 2.

(b) Except as provided in s. 901.05, neither common law nor statutory rules of evidence are binding at a hearing for a child

held in custody under s. 48.21, a hearing for an adult expectant mother held in custody under s. 48.213, a runaway home hearing under s. 48.227 (4), a dispositional hearing, or a hearing about changes in placement, revision of dispositional orders, extension of dispositional orders or termination of guardianship orders entered under s. 48.977 (4) (h) 2. or (6) or 48.978 (2) (j) 2. or (3) (g). At those hearings, the court shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony or evidence that is inadmissible under s. 901.05. Hearsay evidence may be admitted if it has demonstrable circumstantial guarantees of trustworthiness. The court shall give effect to the rules of privilege recognized by law. The court shall apply the basic principles of relevancy, materiality and probative value to proof of all questions of fact. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and shall be noted in the record.

(5) On request of any party, unless good cause to the contrary is shown, any hearing under s. 48.209 (1) (e), 48.21 (1) or 48.213 (1) may be held on the record by telephone or live audiovisual means or testimony may be received by telephone or live audiovisual means as prescribed in s. 807.13 (2). The request and the showing of good cause for not conducting the hearing or admitting testimony by telephone or live audiovisual means may be made by telephone.

(6) If a man who has been given notice under s. 48.27 (3) (b) 1. appears at any hearing for which he received the notice, alleges that he is the father of the child and states that he wishes to establish the paternity of the child, all of the following apply:

(a) The court shall refer the matter to the state or to the attorney responsible for support enforcement under s. 59.53 (6) (a) for a determination, under s. 767.45, of whether an action should be brought for the purpose of determining the paternity of the child.

(b) The state or the attorney responsible for support enforcement who receives a referral under par. (a) shall perform the duties specified under s. 767.45 (5) (c) and (6r).

(c) The court having jurisdiction over actions affecting the family shall give priority under 767.475 (7m) to an action brought under s. 767.45 whenever the petition filed under s. 767.45 indicates that the matter was referred by the court under par. (a).

(d) The court may stay the proceedings under this chapter pending the outcome of the paternity proceedings under ss. 767.45 to 767.60 if the court determines that the paternity proceedings will not unduly delay the proceedings under this chapter, and the determination of paternity is necessary to the court's disposition of the child if the child is found to be in need of protection or services, or the court determines that the

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paternity proceedings may result in a child's tribe requesting jurisdiction of the case.

(e) 1. In this paragraph, "genetic test" means a test that examines genetic markers present on blood cells, skin cells, tissue cells, bodily fluid cells or cells of another body material for the purpose of determining the statistical probability that a man who is alleged to be a child's father is the child's biological father.

2. The court shall, at the hearing, orally inform any man specified in sub. (6) (intro.) that he may be required to pay for any testing ordered by the court under this paragraph or under s. 885.23.

3. In addition to ordering testing as provided under s. 885.23, if the court determines that it would be in the best interests of the child, the court may order any man specified in sub. (6) (intro.) to submit to one or more genetic tests which shall be performed by an expert qualified as an examiner of genetic markers present on the cells and of the specific body material to be used for the tests, as appointed by the court. A report completed and certified by the court-appointed expert stating genetic test results and the statistical probability that the man alleged to be the child's father is the child's biological father based upon the genetic tests is admissible as evidence without expert testimony and may be entered into the record at any hearing. The court, upon request by a party, may order that independent tests be performed by other experts qualified as examiners of genetic markers present on the cells of the specific body materials to be used for the tests.

4. If the genetic tests show that an alleged father is not excluded and that the statistical probability that the alleged father is the child's biological father is 99.0% or higher, the court may determine that for purposes of a proceeding under this chapter, other than a proceeding under subch. VIII, the man is the child's biological parent.

5. A determination by the court under subd. 4. is not a judgment of paternity under ch. 767 or an adjudication of paternity under subch. VIII.

(7) If a man who has been given notice under s. 48.27 (3) (b) 1. appears at any hearing for which he received the notice but does not allege that he is the father of the child and state that he wishes to establish the paternity of the child or if no man to whom such notice was given appears at a hearing, the court may refer the matter to the state or to the attorney responsible for support enforcement under s. 59.53 (6) (a) for a determination, under s. 767.45, of whether an action should be brought for the purpose of determining the paternity of the child.

(8) As part of the proceedings under this chapter, the court may order that a record be made of any testimony of the child's mother relating to the child's paternity. A record made under

this subsection is admissible in a proceeding to determine the child's paternity under ss. 767.45 to 767.60.

**History:** 1979 c. 300; 1981 c. 353; 1985 a. 311; 1987 a. 27; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1991 a. 263, 269; 1993 a. 16, 32, 98, 227, 228, 395; 1995 a. 77, 201, 275; 1997 a. 35, 252, 292, 334; 1999 a. 32, 149.

**Judicial Council Note, 1988:** Sub. (5) allows a judicial review of the status of a child held in a county jail, or a continuation of custody hearing, to be held by telephone conference, or telephoned testimony to be admitted at such a hearing, on request of any party, unless good cause to the contrary is shown. [Re Order effective Jan. 1, 1988]

**48.30 Plea hearing.** (1) Except as provided in this subsection, the hearing to determine whether any party wishes to contest an allegation that the child or unborn child is in need of protection or services shall take place on a date which allows reasonable time for the parties to prepare but is within 30 days after the filing of a petition for a child or an expectant mother who is not being held in secure custody or within 10 days after the filing of a petition for a child who is being held in secure custody.

(2) At the commencement of the hearing under this section the child and the parent, guardian or legal custodian, the child expectant mother, her parent, guardian or legal custodian and the unborn child through the unborn child's guardian ad litem or the adult expectant mother and the unborn child through the unborn child's guardian ad litem, shall be advised of their rights as specified in s. 48.243 and shall be informed that a request for a jury trial or for a substitution of judge under s. 48.29 must be made before the end of the plea hearing or be waived. Nonpetitioning parties, including the child, shall be granted a continuance of the plea hearing if they wish to consult with an attorney on the request for a jury trial or substitution of a judge.

(3) If a petition alleges that a child is in need of protection or services under s. 48.13 or that an unborn child of a child expectant mother is in need of protection or services under s. 48.133, the nonpetitioning parties and the child, if he or she is 12 years of age or older or is otherwise competent to do so, shall state whether they desire to contest the petition. If a petition alleges that an unborn child of an adult expectant mother is in need of protection or services under s. 48.133, the adult expectant mother of the unborn child shall state whether she desires to contest the petition.

(6) (a) If a petition is not contested, the court shall set a date for the dispositional hearing which allows reasonable time for the parties to prepare but is no more than 10 days after the plea hearing for a child who is held in secure custody and no more than 30 days after the plea hearing for a child or an expectant mother who is not held in secure custody. If all parties consent the court may proceed immediately with the dispositional hearing.

(am) Notwithstanding par. (a), if it is determined at the plea hearing that the child is or may be an Indian child, the court

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shall provide notice to any Indian custodian or Indian tribe of the child. Notification shall be by registered mail with return receipt requested and shall include a description of the pending proceedings and of their right of intervention. The parent, Indian custodian, or Indian tribe of the child shall, upon request, be granted up to 20 additional days to prepare for the proceeding.

(b) If it appears to the court that disposition of the case may include placement of the child outside the child's home, the court shall order the child's parent to provide a statement of income, assets, debts and living expenses to the court or the designated agency under s. 48.33 (1) at least 5 days before the scheduled date of the dispositional hearing or as otherwise ordered by the court. The clerk of court shall provide, without charge, to any parent ordered to provide a statement of income, assets, debts and living expenses a document setting forth the percentage standard established by the department of workforce development under s. 49.22 (9) and the manner of its application established by the department of health and family services under s. 46.247 and listing the factors that a court may consider under s. 46.10 (14) (c).

(c) If the court orders the child's parent to provide a statement of income, assets, debts and living expenses to the court or if the court orders the child's parent to provide that statement to the designated agency under s. 48.33 (1) and that designated agency is not the county department or, in a county having a population of 500,000 or more, the department, the court shall also order the child's parent to provide that statement to the county department or, in a county having a population of 500,000 or more, the department at least 5 days before the scheduled date of the dispositional hearing or as otherwise ordered by the court. The county department or, in a county having a population of 500,000 or more, the department shall provide, without charge, to the parent a form on which to provide that statement, and the parent shall provide that statement on that form. The county department or, in a county having a population of 500,000 or more, the department shall use the information provided in the statement to determine whether the department may claim federal foster care and adoption assistance reimbursement under 42 USC 670 to 679a for the cost of providing care for the child.

(7) If the petition is contested, the court shall set a date for the fact-finding hearing which allows reasonable time for the parties to prepare but is no more than 20 days after the plea hearing for a child who is held in secure custody and no more than 30 days after the plea hearing for a child or an expectant mother who is not held in secure custody.

(8) Before accepting an admission or plea of no contest of the alleged facts in a petition, the court shall:

(a) Address the parties present including the child or expectant mother personally and determine that the plea or admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential dispositions.

(b) Establish whether any promises or threats were made to elicit the plea or admission and alert unrepresented parties to the possibility that a lawyer may discover defenses or mitigating circumstances which would not be apparent to them.

(c) Make such inquiries as satisfactorily establishes that there is a factual basis for the plea or admission of the parent and child, of the parent and child expectant mother or of the adult expectant mother.

(9) If a circuit court commissioner conducts the plea hearing and accepts an admission of the alleged facts in a petition brought under s. 48.13 or 48.133, the judge shall review the admission at the beginning of the dispositional hearing by addressing the parties and making the inquiries set forth in sub. (8).

(10) The court may permit any party to participate in hearings under this section by telephone or live audiovisual means.

**History:** 1977 c. 354, 355, 447; 1979 c. 300, 331, 355, 359; 1985 a. 321, 332; 1987 a. 151; 1987 a. 403 s. 256; Sup. Ct. Order, 158 Wis. 2d xvii (1990); 1993 a. 163, 474, 481; 1995 a. 77, 225, 404, 417; 1997 a. 3, 252, 292; 1999 a. 103; 2001 a. 61.

The time limits under sub. (1) are mandatory; failure to comply results in the court's loss of competency and is properly remedied by dismissal without prejudice. In Interest of Jason B. 176 Wis. 2d 400, 500 N.W.2d 384 (Ct. App. 1993).

A court's failure to inform a juvenile of the right to judicial substitution does not affect its competence and warrants reversal only if the juvenile suffers actual prejudice. State v. Kywanda F. 200 Wis. 2d 26, 546 N.W.2d 440 (1996), 94-1866.

**48.305 Hearing upon the involuntary removal of a child or expectant mother.** Notwithstanding other time periods for hearings under this chapter, if a child is removed from the physical custody of the child's parent or guardian under s. 48.19 (1) (c) or (cm) or (d) 5. or 8. without the consent of the parent or guardian or if an adult expectant mother is taken into custody under s. 48.193 (1) (c) or (d) 2. without the consent of the expectant mother, the court shall schedule a plea hearing and fact-finding hearing within 30 days after a request from the parent or guardian from whom custody was removed or from the adult expectant mother who was taken into custody. The plea hearing and fact-finding hearing may be combined. This time period may be extended only with the consent of the requesting parent, guardian or expectant mother.

**History:** 1977 c. 354; 1979 c. 300; 1997 a. 292.

**48.31 Fact-finding hearing.** (1) In this section, "fact-finding hearing" means a hearing to determine if the allegations in a petition under s. 48.13 or 48.133 or a petition to terminate parental rights are proved by clear and convincing evidence.

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(2) The hearing shall be to the court unless the child, the child's parent, guardian, or legal custodian, the unborn child by the unborn child's guardian ad litem, or the expectant mother of the unborn child exercises the right to a jury trial by demanding a jury trial at any time before or during the plea hearing. If a jury trial is demanded in a proceeding under s. 48.13 or 48.133, the jury shall consist of 6 persons. If a jury trial is demanded in a proceeding under s. 48.42, the jury shall consist of 12 persons unless the parties agree to a lesser number. Chapters 756 and 805 shall govern the selection of jurors. If the hearing involves a child victim or witness, as defined in s. 950.02, the court may order that a deposition be taken by audiovisual means and allow the use of a recorded deposition under s. 967.04 (7) to (10) and, with the district attorney, shall comply with s. 971.105. At the conclusion of the hearing, the court or jury shall make a determination of the facts, except that in a case alleging a child or an unborn child to be in need of protection or services under s. 48.13 or 48.133, the court shall make the determination under s. 48.13 (intro.) or 48.133 relating to whether the child or unborn child is in need of protection or services that can be ordered by the court. If the court finds that the child or unborn child is not within the jurisdiction of the court or, in a case alleging a child or an unborn child to be in need of protection or services under s. 48.13 or 48.133, that the child or unborn child is not in need of protection or services that can be ordered by the court or if the court or jury finds that the facts alleged in the petition have not been proved, the court shall dismiss the petition with prejudice.

(4) The court or jury shall make findings of fact and the court shall make conclusions of law relating to the allegations of a petition filed under s. 48.13, 48.133 or 48.42, except that the court shall make findings of fact relating to whether the child or unborn child is in need of protection or services which can be ordered by the court. In cases alleging a child to be in need of protection or services under s. 48.13 (11), the court may not find that the child is suffering emotional damage unless a licensed physician specializing in psychiatry or a licensed psychologist appointed by the court to examine the child has testified at the hearing that in his or her opinion the condition exists, and adequate opportunity for the cross-examination of the physician or psychologist has been afforded. The judge may use the written reports if the right to have testimony presented is voluntarily, knowingly and intelligently waived by the guardian ad litem or legal counsel for the child and the parent or guardian. In cases alleging a child to be in need of protection or services under s. 48.13 (11m) or an unborn child to be in need of protection or services under s. 48.133, the court may not find that the child or the expectant mother of the unborn child is in need of treatment and education for needs and problems related to the use or abuse of alcohol beverages, controlled substances

or controlled substance analogs and its medical, personal, family or social effects unless an assessment for alcohol and other drug abuse that conforms to the criteria specified under s. 48.547 (4) has been conducted by an approved treatment facility.

(7) (a) At the close of the fact-finding hearing, the court shall set a date for the dispositional hearing which allows a reasonable time for the parties to prepare but is no more than 10 days after the fact-finding hearing for a child in secure custody and no more than 30 days after the fact-finding hearing for a child or expectant mother who is not held in secure custody. If all parties consent, the court may immediately proceed with a dispositional hearing.

(am) Notwithstanding par. (a), if it is determined at the fact-finding hearing that the child is or may be an Indian child, the court shall provide notice to any Indian custodian or Indian tribe of the child. Notification shall be by registered mail with return receipt requested and shall include a description of the pending proceedings and of their right of intervention. The parent, Indian custodian, or Indian tribe of the child shall, upon request, be granted up to 20 additional days to prepare for the proceeding.

(b) If it appears to the court that disposition of the case may include placement of the child outside the child's home, the court shall order the child's parent to provide a statement of income, assets, debts and living expenses to the court or the designated agency under s. 48.33 (1) at least 5 days before the scheduled date of the dispositional hearing or as otherwise ordered by the court. The clerk of court shall provide, without charge, to any parent ordered to provide a statement of income, assets, debts and living expenses a document setting forth the percentage standard established by the department of workforce development under s. 49.22 (9) and the manner of its application established by the department of health and family services under s. 46.247 and listing the factors that a court may consider under s. 46.10 (14) (c).

(c) If the court orders the child's parent to provide a statement of income, assets, debts and living expenses to the court or if the court orders the child's parent to provide that statement to the designated agency under s. 48.33 (1) and that designated agency is not the county department or, in a county having a population of 500,000 or more, the department, the court shall also order the child's parent to provide that statement to the county department or, in a county having a population of 500,000 or more, the department at least 5 days before the scheduled date of the dispositional hearing or as otherwise ordered by the court. The county department or, in a county having a population of 500,000 or more, the department shall provide, without charge, to the parent a form on which to provide that statement, and the parent shall provide that

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